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# PENNSYLVANIA BULLETIN

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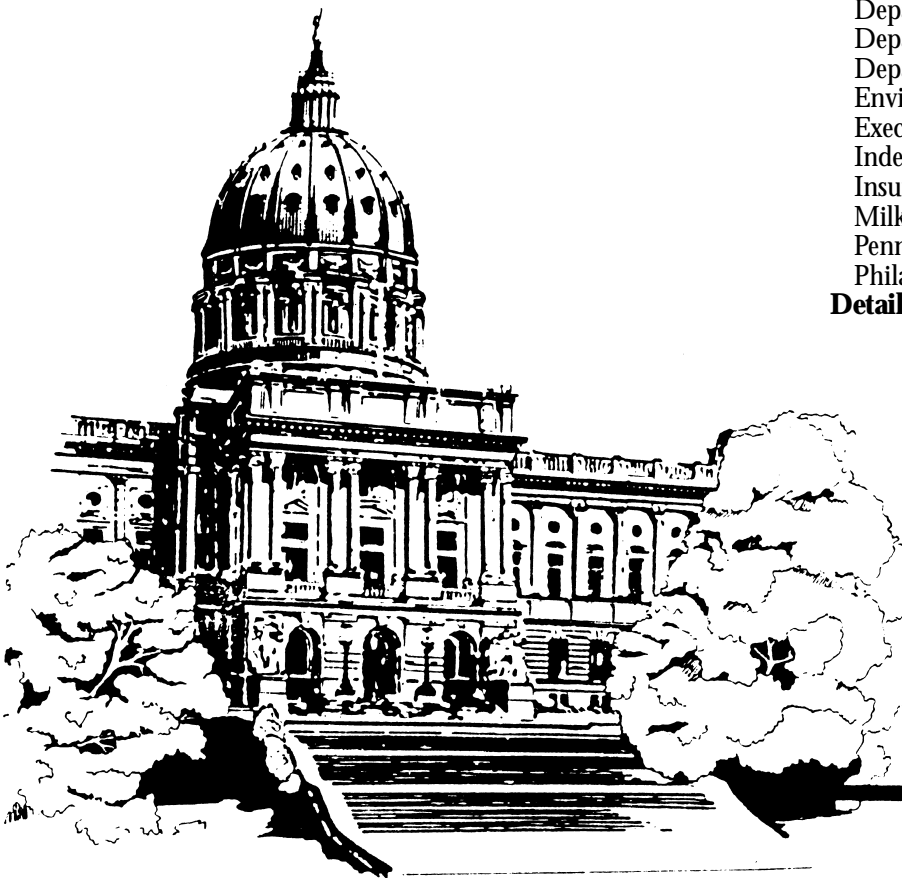
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Draft Temporary Regulations

## Part I

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Department of Public Welfare  
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Environmental Quality Board  
Executive Board  
Independent Regulatory Review Commission  
Insurance Department  
Milk Marketing Board  
Pennsylvania Public Utility Commission  
Philadelphia Regional Port Authority

**Detailed list of contents appears inside.**



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

**No. 371, October 2005**

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

## ***Pennsylvania Bulletin***

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

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

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

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

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

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

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

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

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

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

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

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

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

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

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### Printing Format

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

### Fiscal Notes

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

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

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## List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2005.

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# THE GOVERNOR

## Title 4—ADMINISTRATION

### PART I. GOVERNOR'S OFFICE

#### [4 PA. CODE CH. 6]

#### [EXECUTIVE ORDER 2005-8]

### Governor's Renewable Agricultural Energy Council

September 20, 2005

*Whereas*, In 1950, the United States was 100% self-sufficient on its own oil reserves, but, in less than fifty years, the nation shifted its dependency on oil imports to meet two-thirds of our daily requirements; and

*Whereas*, America's dependence on non-renewable energy sources from foreign nations poses a risk to the Commonwealth's and Country's energy, economic, and environmental security; and

*Whereas*, Pennsylvania spends more than \$30 billion annually on energy fuel imports; and

*Whereas*, agriculture and agriculture-related industries are the number one industry in the Commonwealth of Pennsylvania, contributing more than \$44 billion to the state economy; and

*Whereas*, renewable agricultural energy has the potential to support and grow the agriculture industry in Pennsylvania by providing up to 64,000 additional jobs, diversifying agricultural activities, and stimulating the growth of crops that strengthen the agriculture industry; and

*Whereas*, agricultural energy sources could save the average household \$1,200 annually on energy bills; and provide an additional source of income, increase the tax base, and thereby, benefit county and local services including schools, health care facilities, and roads; and

*Whereas*, a two-tiered Portfolio Standard has been enacted in Pennsylvania to ensure that in fifteen years, 18% of all energy generated in Pennsylvania comes from clean, efficient sources. The Portfolio Standard also requires 8% of all electricity sold at retail to come from traditional renewable sources such as solar photo-voltaic energy, wind power, low-impact hydropower, municipal solid waste, biomass energy, biologically derived methane gas, and other sources; and

*Whereas*, the Portfolio Standard will give farmers a more level playing field for power generation from agricultural methane or wind turbines; and

*Whereas*, imported ethanol fuels from out-of-state costs an additional 15 cents per gallon as compared to ethanol fuels produced with in-state products; and

*Whereas*, Pennsylvania has an abundance of resources, such as mixed waste, straw, forest thinning, and forest residues, needed to produce cellulosic ethanol; and

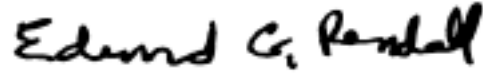
*Whereas*, manure digesters produce methane gas which can increase the profitability of farms in Pennsylvania; and

*Whereas*, the agriculture industry can be a critical partner in fostering alternative energy sources that will reduce our dependence on foreign energy; and

*Whereas*, interagency coordination for the development and promotion of biofuels and agricultural renewable energy sources is essential in order to create a comprehensive agricultural renewable energy strategy for the Commonwealth.

*Now Therefore*, I, Edward G. Rendell, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws of the Commonwealth,

do hereby create the Governor's Renewable Agricultural Energy Council (hereafter referred to as "Council") as the Commonwealth's entity to coordinate the development and expansion of agricultural energy industries in the state of Pennsylvania.



*Governor*

**Fiscal Note:** GOV 05-12. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 4. ADMINISTRATION**

**PART I. GOVERNOR'S OFFICE**

**CHAPTER 6. ADDITIONAL COUNCILS AND COMMITTEES**

**Subchapter P. GOVERNOR'S RENEWABLE AGRICULTURAL ENERGY COUNCIL**

Sec.	
6.231.	Functions.
6.232.	Composition.
6.233.	Chairpersons.
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6.235.	Terms.
6.236.	Relationship with other agencies.
6.237.	Reports and studies.
6.238.	Procedure.
6.239.	Effective date.
6.240.	Termination date.

**§ 6.231. Functions.**

The functions of the Governor's Renewable Agricultural Energy Council are to:

(1) Make recommendations to the Governor on policies, procedures, regulations and legislation that would aid in the development of renewable energy.

(2) Serve as the Governor's liaison to the agricultural community on policies, procedures, regulations and legislation that affect the production of renewable energy to ensure that State government is accessible, accountable and responsive to the constituency developing renewable energy.

(3) Serve as a resource to all departments, commissions and agencies under the Governor's jurisdiction to ensure that these government entities are cognizant of the issues surrounding the development of renewable energy.

(4) Provide guidance and assistance to help industry establish and develop the infrastructure necessary to deliver renewable energy sources to consumers within this Commonwealth.

**§ 6.232. Composition.**

The Governor's Renewable Agricultural Energy Council is composed of the following individuals appointed by the Governor:

(1) The Secretary of Agriculture or a designee and the Secretary of Environmental Protection or a designee.

(2) Two representatives from the Department of Environmental Protection.

(3) Two representatives from the Department of Agriculture.

(4) One representative from the State Conservation Commission.

(5) One representative from the Governor's Policy Office.

(6) One representative from the Department of Community and Economic Development.

(7) One representative from the Legislature.

(8) One representative from the United States Department of Agriculture.

(9) One representative from a local government entity.

(10) Five active farmers who implement, use or produce agricultural energy inputs.

(11) Four individuals with knowledge and expertise in agricultural energy and environmental law, regulation and research, including ethanol, biodiesel, wind energy, methane and gasification.

(12) Four individuals from colleges/universities specializing in various sectors of agricultural energy development and one individual specializing in agricultural crop based energy.

**§ 6.233. Chairpersons.**

The Secretaries of Agriculture and Environmental Protection serve as co-chairpersons of the Governor's Renewable Agricultural Energy Council on a rotating basis. Each term as chairperson lasts 1 year. The Secretary of Agriculture shall serve the initial term.

**§ 6.234. Compensation and expenses.**

The members of the Governor's Renewable Agricultural Energy Council (Council) do not receive a salary or per diem allowance for serving as members of the Council but will be reimbursed for actual and necessary expenses incurred in the performance of their duties in accordance with Commonwealth policy. See Chapter 40 (relating to travel and subsistence).

**§ 6.235. Terms.**

(a) The terms of the Secretaries of Agriculture and Environmental Protection are concurrent with their holding public office.

(b) The remaining members of the Governor's Renewable Agricultural Energy Council serve at the pleasure of the Governor and may be removed at the will of the Governor.

**§ 6.236. Relationship with other agencies.**

Agencies under the jurisdiction of the Governor shall cooperate with and provide any necessary assistance to the Governor's Renewable Agricultural Energy Council (Council) in performing its functions. The Council will receive administrative support from the Department of Agriculture (Department) and will coordinate its functions and activities through the Department's Policy Office.

**§ 6.237. Reports and studies.**

The Governor's Renewable Agricultural Energy Council may conduct studies and issue reports deemed necessary on issues affecting the use of renewable energy in this Commonwealth.

**§ 6.238. Procedure.**

The Governor's Renewable Agricultural Energy Council is authorized to establish subcommittees, rules and procedures for the effective implementation of its functions consistent with this subchapter.

**§ 6.239. Effective date.**

This subchapter takes effect immediately.

**§ 6.240. Termination date.**

This subchapter remains in effect unless revised or rescinded by the Governor.

[Pa.B. Doc. No. 05-1936. Filed for public inspection October 21, 2005, 9:00 a.m.]

# THE GENERAL ASSEMBLY

## Recent Actions during the 2005 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2005 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
<b>2005 GENERAL ACTS ENACTED—ACT 059 through 060</b>					
059	Oct 6	HB0875	PN2658	Immediately*	Emergency and Law Enforcement Personnel Death Benefits Act—death benefit eligibility
060	Oct 6	HB1261	PN1487	Immediately	Military and Veterans Code (51 Pa.C.S.)—deferred motor vehicle insurance coverage

\* denotes an effective date with exceptions

### Effective Dates of Statutes

The effective dates specified above for laws and appropriation acts were contained in the applicable law or appropriation act. Where no date is specified or where the effective date specified is prior to the date of enactment, the effective date is 60 days after final enactment except for statutes making appropriations or affecting budgets of political subdivisions. See 1 Pa.C.S. §§ 1701—1704 (relating to effective dates of statutes).

### Advance Copies of Statutes

Section 1106 of Title 1 of the *Pennsylvania Consolidated Statutes* provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the *Laws of Pennsylvania* are generally available. Section 2406(h) of The Administrative Code of 1929 provides that the Department of General Services shall distribute advance sheets of the *Laws of Pennsylvania* to each law judge of the courts, to every county and public library of this Commonwealth and to each member of the General Assembly. These copies shall be furnished without charge. The Department shall also mail one copy of each law enacted during any legislative session to any person who pays to it the sum of \$20.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore, PHMC, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0053, accompanied by a check or money order in the sum of \$20, payable to the "Commonwealth of Pennsylvania."

ROBERT ZECH,  
*Director*  
*Legislative Reference Bureau*

[Pa.B. Doc. No. 05-1937. Filed for public inspection October 21, 2005, 9:00 a.m.]

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 17 AND 33]

Order Adopting Pa.R.A.P. 1702(d) and 3316; No. 170; Appellate Procedural Rules; Doc. No. 1

#### Order

*Per Curiam*

And Now, this 7th day of October, 2005, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 32 Pa.B. 5260 (October 26, 2002),

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Appellate Procedure 1702(d) and 3316 be adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective February 1, 2006.

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS

#### IN GENERAL

#### Rule 1702. Stay Ancillary to Appeal.

\* \* \* \* \*

(d) *Stay of execution.*—When a trial court enters an order granting or denying a stay of execution in a capital case, such order may be reviewed by the Supreme Court upon application pursuant to Rule 123. No appeal or petition for review need be filed in connection with an application for review of a stay order in a capital case.

\* \* \* \* \*

#### Explanatory Note—2005

Nothing in subdivision (d) of Pa.R.A.P. 1702 or in Pa.R.A.P. 3316 is intended to abrogate the requirement in *Commonwealth v. Morris*, 573 Pa. 157, 822 A.2d 684 (2003) (“*Morris II*”) that any grant of a stay by the trial court while a Post Conviction Relief Act (“PCRA”) petition is pending must comply with the PCRA, 42 Pa.C.S. § 9545(c)(1), nor do these rules expand or diminish any inherent powers of the Supreme Court to grant a stay of execution. See *Morris II*; see also Pa.R.A.P. 3316 and Explanatory Comment.

#### ARTICLE III. MISCELLANEOUS PROVISIONS

#### CHAPTER 33. BUSINESS OF THE SUPREME COURT

#### SUPERSEDEAS AND STAYS

#### Rule 3316. Review of Stay of Execution Orders in Capital Cases.

When a trial court has entered an order granting or denying a stay of execution in a capital case, such order

may be reviewed by the Supreme Court in the manner prescribed in Rule 1702(d).

#### Explanatory Comment—2005

The promulgation of new Rule 3316 addresses a gap in the Rules of Appellate Procedure such that there was no immediate vehicle for review of stays of execution orders granted or denied ancillary to Post Conviction Relief Act (“PCRA”) petitions in capital cases. See *Commonwealth v. Morris*, 565 Pa. 1, 771 A.2d 721 (2001) (“*Morris I*”). The new Rule permits an immediate appeal from an order granting or denying a stay pending a determination of the underlying PCRA petition. The new Rule also permits immediate review of a grant of a stay of execution without the filing of an appeal in situations in which the trial court grants a stay of execution but denies the PCRA petition.

There may be cases in which the PCRA court denies a stay of execution at the same time that it denies a timely PCRA petition. In such cases, the petitioner may take an immediate appeal from the denial of the stay of execution, even before the petitioner files an appeal from the denial of the PCRA petition. The PCRA court lacks jurisdiction to grant a stay of execution in connection with an untimely PCRA petition. See *Morris I*. However, the improper grant of a stay in connection with an untimely PCRA petition is also immediately reviewable under this Rule. See Pa.R.Crim.P. 909(A)(2).

Pa.R.Crim.P. 909(A)(2) only applies to properly granted stays of execution. Once a stay is properly granted, it is not reviewable until the conclusion of the PCRA proceedings, including appellate review. However, the Commonwealth may seek review under Rule 3316 to determine whether the PCRA court properly granted the stay.

The standard of review for stay applications under 42 Pa.C.S. § 9545(c) is a heightened standard, since there is a greater potential that second and subsequent PCRA applications have been filed merely for purposes of delaying the execution of sentence. See *Morris I* and *Commonwealth v. Morris*, 573 Pa. 157, 822 A.2d 684 (2003) (“*Morris II*”). Stays of execution in capital cases, however, are routinely granted in timely-filed, first PCRA petitions.

Nothing in this Rule or subdivision (d) of Rule 1702 is intended to abrogate the requirement in *Morris II* that any grant of a stay by the trial court while a PCRA petition is pending must comply with the PCRA, 42 Pa.C.S. § 9545(c)(1), nor do these rules expand or diminish any inherent powers of the Supreme Court to grant a stay of execution. See *Morris II*.

[Pa.B. Doc. No. 05-1938. Filed for public inspection October 21, 2005, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

### Proposed Amendments to Pa.R.Crim.P. 105

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 105. The amendments require that

all new local rules and local rule amendments be submitted in writing to the Criminal Procedural Rules Committee for review and approval before publishing and before the local rules will be effective and enforceable. The changes also clarify the definition of local rules, the procedures concerning the implementation of local rules, and their enforcement. 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 the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to Rule 105 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 to the Committee through counsel,

Anne T. Panfil  
Chief Staff Counsel  
Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
5035 Ritter Road, Suite 100  
Mechanicsburg, PA 17055  
fax: (717) 795-2106  
e-mail: criminal.rules@pacourts.us

no later than Monday, November 28, 2005.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,  
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 105. Local Rules.

(A) For the purpose of this rule, the term "local rule" shall include every rule, **administrative order**, regulation, directive, policy, custom, usage, form or order of general application, however labeled or promulgated, which is adopted or enforced by a court of common pleas, by the Philadelphia Municipal Court, or by the Philadelphia Traffic Court to govern criminal practice and procedure.

(B) **[(1)]** Local rules shall not be inconsistent with any general rule of the Supreme Court or any Act of Assembly.

**(1) The Criminal Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule.**

**(2) The Criminal Procedural Rules Committee may suspend that local rule pending action by the Court on that recommendation.**

**[(2)] (C) \*\*\***

**[(C) A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:**

**(1) A local rule shall be in writing.**

**(2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.**

**(3) Two certified copies of the local rules and a computer diskette that complies with the requirements of 1 Pa. Code § 13.11(b) shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.**

**(4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Criminal Procedural Rules Committee. ]**

**(D) All proposed local criminal rules and proposed amendments to local criminal rules shall be submitted in writing to the Criminal Procedural Rules Committee for the Committee to review. The adopting court shall not proceed with the proposed local rule or amendments until it receives written approval of the local rule from the Committee.**

**(E) All local rules shall be published in the *Pennsylvania Bulletin* to be effective and enforceable.**

**(1) The adopting court shall not publish the local rule in the *Pennsylvania Bulletin* until it has received the written approval from the Committee.**

**(2) The adopting court shall distribute two certified copies of the local rule and a computer diskette that complies with the requirements of 1 Pa. Code § 13.11(b) to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.**

**(3) The effective date of the local rule shall not be less than 30 days after the date of publication of the rule in the *Pennsylvania Bulletin*.**

**(F) After publishing the local rule in the *Pennsylvania Bulletin*, the adopting court shall file seven certified copies of the local rule with the Administrative Office of Pennsylvania Courts.**

**[(5)] (G) \*\*\***

**[(6)] (H) A local rule promulgated before the effective date of this rule shall be filed on or before that effective date with the prothonotary or clerk of court and shall be kept by the prothonotary or clerk for inspection, copying, and furnishing as provided in paragraph **[(C)(5)] (G)**.**

**[(D) A local rule shall become effective not less than 30 days after the date of publication of the rule in the *Pennsylvania Bulletin*.**

**(E) [(I) No pleading or other legal paper shall be refused for filing by the clerk of courts based on a requirement of a local rule. No case shall be dismissed nor request for relief granted or denied because of failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the [ attorney ] party to comply with the local rule.**

**[(F) The Criminal Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation. ]**



Comment

\* \* \* \* \*

Paragraph (D), added in 2006, requires that the adopting court must submit all proposed local criminal rules or rule amendments to the Criminal Procedural Rules Committee for prior approval before publishing the local rule or proceeding with any of the other requirements in Rule 105.

[ Paragraph (C) was amended in ] The 2000 [ to ] and 2006 amendments emphasize that the adopting authority must comply with all the provisions of [ paragraph (C) ] this rule before any local rule, or any amendments to local rules, will be effective and enforceable. Paragraph [ (C)(3) ] (E) requires the local rule to be published in the Pennsylvania Bulletin to be effective. Pursuant to 1 Pa. Code § 13.11(b), any documents that are submitted for publication must be accompanied by a diskette formatted in MS-DOS, ASCII, Microsoft Word, or WordPerfect. The diskette must be labeled with the court's name and address and the local rule's computer file name.

Paragraph [ (C)(5) ] (G) requires that a separate consolidated set of local rules be maintained in the prothonotary's or clerk's office.

\* \* \* \* \*

Although under paragraph [ (D) ] (E)(3) a local rule shall not be effective until at least 30 days after the date of publication in the Pennsylvania Bulletin, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The purpose of paragraph [ (E) ] (I) is to (1) require that all documents presented for filing are accepted by the clerk of courts, also see Rule 576(A)(3), and (2) prevent the dismissal of cases, or the grant or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph [ (E) ] (I) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph [ (E) ] (I), the court may impose a sanction for subsequent noncompliance either on counsel or the defendant if proceeding pro se, but may not dismiss the case, or grant or deny relief because of non-compliance.

**Official Note:** Rule 6 adopted January 28, 1983, effective July 1, 1983; amended May 19, 1987, effective July 1, 1987; renumbered Rule 105 and amended March 1, 2000, effective April 1, 2001; amended October 24, 2000, effective January 1, 2001; Comment revised June 8, 2001, effective immediately; amended October 15, 2004, effective January 1, 2005; amended September 9, 2005, effective February 1, 2006; amended , 2006, effective , 2006.

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining the changes to Rule 105 concerning submission of local rules for approval published at 35 Pa.B. 5770 (October 22, 2005).

REPORT  
Proposed Amendments to Pa.R.Crim.P. 105  
Local Rule Procedures

I. BACKGROUND

In 1983, the Court adopted Pa.R.Crim.P. 105 and Pa.R.Civ.P. 239 "to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of criminal [and civil] procedure normally preempts the subject covered." The new rule provided a uniform definition of local rules, prerequisites to effectiveness and effective dates, procedures for accessibility and distribution, and for the suspension of inconsistent local rules.

From the Committee's ongoing monitoring of local criminal rules and local practices, and from the experience of the Committee members and other members of the bar who have communicated with the Committee, notwithstanding the Court having adopted several subsequent Rule 105 amendments that were intended to make the requirements for local rules absolutely clear, we have learned Rule 105 continues to be honored in the breach. Some judges continue to implement local practices and procedures that do not comply with Rule 105 by calling them something other than a local rule, even though they are local rules within the definition of Rule 105. In addition, some judicial districts' "local rules" still are not being published or are not being made available to the members of the bar. Finally, in many cases, these local practices and procedures conflict with the statewide rules.

Recognizing the changes to Rule 105 since 1983 have not been successful in resolving the problems with local rules, the Committee agreed that Rule 105 should be amended to require that prior to publication and enactment, all new local rules and local rule amendments must be submitted in writing to the Committee for approval to publish, and to make it clear in the rule that unless the local adopting court receives the Committee's approval, the local rule will not be effective and enforceable. The proposed amendments are discussed below.

II. DISCUSSION

In an effort to ensure compliance with the Rule 105 requirements, the Committee is proposing that all new local rules and local rule amendments must be submitted to the Committee for the Committee's review before the local rule may be published and before it will be effective and enforceable. This new provision is set forth in new paragraph (D). Pursuant to this new procedure, the adopting court is required to submit in writing to the Committee any proposal that governs criminal practice and procedure for the Committee's review. The Committee will determine whether the proposal complies with Rule 105, including whether it is consistent with the general rules of the Supreme Court and with the Acts of Assembly as required in current Rule 105(B). Following our review, the Committee will communicate in writing with the adopting court. The adopting court is prohibited from proceeding with the proposal until receiving written approval from the Committee.

The Committee also is proposing that Rule 105 be reorganized to more clearly emphasize the essential requirements of the rule. Paragraph (A), which sets forth the "definition" of local rule, would remain the same. The Committee is proposing that "administrative order" be added to the list of things in paragraph of (A) that are considered "local rules." In our experience, many local enactments labeled "administrative orders" are in fact "local rules" that should be in compliance with Rule 105.

Because this apparently is not as clear as the Committee had thought, we agreed this term should be added to paragraph (A). The only administrative orders that would be subject to Rule 105 are those that govern in some way criminal practice and procedure. This change is not intended to affect administrative orders that govern other aspects of court operations, such as administrative orders that establish local court calendars.

Current paragraph (B) addresses both the requirement for consistency with statewide rules and Acts of Assembly, paragraph (B)(1), and the requirement that local rules be given numbers keyed to the statewide rules, paragraph (B)(2). To add emphasis to both requirements, paragraph (B)(1) is retained as paragraph (B), and paragraph (B)(2) would become paragraph (C). In addition, the Committee is proposing that paragraph (F), which addresses the procedures concerning the suspension, vacation, and amendment of local rules that are not in compliance with Rule 105, become new paragraphs (B)(1) and (B)(2).

New paragraph (E) sets forth the provisions related to publishing proposed local rules in the *Pennsylvania Bulletin*, making it clear that to be effective and enforceable, the local rule must be published, but not until the Committee has given its approval in writing as provided in new paragraph (D). In addition, the Committee is proposing that current paragraph (C)(3) concerning the information about what must be sent to the *Pennsylvania Bulletin* be moved to new paragraph (E)(2), and current paragraph (D) that requires the effective date of new local rules and amended local rules be not less than 30 days after publishing in the *Pennsylvania Bulletin* be moved to new paragraph (E)(3).

New paragraph (F) is taken from former paragraph (C)(2) and sets forth the current requirement that the adopting court file seven copies of the local rule with the AOPC after the local rule has been published. Because paragraph (D) requires that the adopting court submit a written copy of the proposed local rule to the Committee for prior approval, current paragraphs (C)(1) and (C)(4) are no longer necessary.

New paragraph (G) is current paragraph (C)(5) and new paragraph (H) is current paragraph (C)(6).

New paragraph (I) incorporates former paragraph (E). The Committee is proposing that paragraph (I) include as a first sentence the requirement that the clerk of courts accept all pleadings and other legal papers for filing even if the document does not satisfy the requirements of a local rule. This new provision is comparable to Pa.R.Civ.P. 205.2, and conforms with the requirements in Pa.R.Crim.P. 576(A)(3).

Finally, the Committee has made conforming changes to the Comment.

[Pa.B. Doc. No. 05-1939. Filed for public inspection October 21, 2005, 9:00 a.m.]

## [234 PA. CODE CH. 9]

### Order Amending Rule 909; No. 331 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the October 7, 2005 amendments to Rule of Criminal Procedure 909 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition). The changes

clarify the provisions of Rule 909(A) (Stays) and the Comment in view of the Court's holdings in *Commonwealth v. Morris*, 565 Pa. 1, 771 A.2d 721 (2001) (Morris I) and *Commonwealth v. Morris*, 573 Pa. 157, 822 A.2d 684 (2003) (Morris II). The Final Report follows the Court's Order.

### Order

*Per Curiam:*

Now, this 7th day of October, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice, and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 909 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 2006.

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 909. Procedures for Petitions in Death Penalty Cases[ ; ]: Stays of Execution of [ Sentences ] Sentence; Hearing; Disposition.

(A) Stays of Execution

\* \* \* \* \*

(2) In all cases in which a stay of execution has been properly granted [ pursuant to 42 Pa.C.S. § 9545(c) ], the stay shall remain in effect through the conclusion of all PCRA proceedings, including review in the Supreme Court of Pennsylvania, or the expiration of time for seeking such review.

\* \* \* \* \*

### Comment

Paragraph (A)(1) was added in 1999 to provide the avenue by which a defendant in a death penalty case may request a stay of execution. Failure to include a request for a stay in the petition for post-conviction collateral relief may not be construed as a waiver, and the defendant may file a separate request for the stay. **In cases involving second or subsequent petitions when an application for a stay is filed separately from the PCRA petition, *Commonwealth v. Morris*, 565 Pa. 1, 771 A.2d 721, 741 (2001), provides that the separate stay application "must set forth: a statement of jurisdiction; if necessary, a statement that a petition is currently pending before the court; and a statement showing a likelihood of prevailing on the merits."**

Paragraph (A)(2) provides [ that, ] if a stay of execution is properly granted, that the stay will remain in effect throughout the PCRA proceedings in the trial court and during the appeal to the Pennsylvania Supreme Court. **Nothing in this rule is intended to preclude a party from seeking review of an order granting or denying a stay of execution. See Pa.R.A.P. 1702(d) (Stay of Execution) and Pa.R.A.P. 3316 (Review of Stay of Execution Orders in Capital Cases).**

\* \* \* \* \*

**Official Note:** Previous Rule 1509 adopted February 1, 1989, effective July 1, 1989; renumbered Rule [ 910 ]

**1510** August 11, 1997, effective immediately. Present Rule 1509 adopted August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; renumbered Rule 909 and amended March 1, 2000, effective April 1, 2001; amended February 12, 2002, effective July 1, 2002, 32 Pa.B. 1173; **amended October 7, 2005, effective February 1, 2006.**

*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).

\* \* \* \* \*

**Final Report explaining the October 7, 2005 amendments to paragraph (A)(2) and revision of the Comment concerning Commonwealth v. Morris published with the Court's Order at 35 Pa.B. 5772 (October 22, 2005).**

#### FINAL REPORT<sup>1</sup>

#### *Amendments to Pa.R.Crim.P. 909*

#### *Commonwealth v. Morris: Stays of Execution*

On October 7, 2005, effective February 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Pa.R.Crim.P. 909. The changes clarify the provisions of Rule 909(A) (Stays) and the Comment in view of the Court's holdings in *Commonwealth v. Morris*, 565 Pa. 1, 771 A.2d 721 (2001) (*Morris I*) and *Commonwealth v. Morris*, 573 Pa. 157, 822 A.2d 684 (2003) (*Morris II*).

#### *Rule 909(A)*

The Committee, working in conjunction with the Appellate Courts Rules Committee,<sup>2</sup> reviewed the two *Morris* decisions, including Justice Castille's concurrence in *Morris I* outlining the history of Section 9545(c) of the PCRA and opining that Section 9545(c) was intended to apply to second or subsequent petitions only, to determine whether any changes to Rule 909 were necessary. We also reviewed the text of 42 Pa.C.S. § 9545(c) and the Committee's Rule 909(A) history.<sup>3</sup> Based on our review, the Committee reasoned if Section 9545(c) only applies to second or subsequent PCRA petitions, and since both *Morris* decisions clearly address serial PCRA petitions only, then the reference to Section 9545(c) in Rule 909(A)(2) is mischievous and too limiting. Accordingly, Rule 909(A)(2) has been amended by deleting the reference to Section 9545(c) to avoid further confusion about the scope of the application of paragraph (A)(2).

In addition, as the Committee worked with the Appellate Rules Committee in developing our respective "*Morris*" proposals, we noted current Rule 909(A) could be construed as being in conflict with the *Morris* changes in new Rule of Appellate Procedure 3316 and amended Rule of Appellate Procedure 1702. In view of this concern, Rule 909(A)(2) has been amended by the addition of "properly" before "granted" in the first line, thus making it clear in

<sup>1</sup> The Committee's Final Reports 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 Committee's explanatory Final Reports.

<sup>2</sup> Because of the interplay between the Criminal Rules and the Appellate Rules concerning stays in death penalty cases in view of the *Morris* decisions, the Committee coordinated our Rule 909 modifications with the Appellate Court Procedural Rules Committee's development of amendments to Rule 1702 and new Rule 3316.

<sup>3</sup> The Rule 909(A) stay provisions were adopted in 1999 in response to a recommendation from the Third Circuit Court's Task Force on Management of Death Penalty Litigation that, when a stay of execution has been granted, the stay should remain in effect for the duration of the post-conviction collateral proceedings at the trial level and any appeal to the Supreme Court. See Committee's Final Report at 29 Pa.B. 4167 (August 7, 1999).

Rule 909 that paragraph (A) is intended to apply only to stays that have been *properly* granted by the trial judge.

#### *Rule 909 Comment*

From our review of the 1999 rule changes when the stay provisions were added to Rule 909, the Committee recalled the language in paragraph (A)(1) and the Comment concerning filing requests for stays in the PCRA petition or as a separate request had been added by the Committee to provide guidance about requesting stays because the PCRA is silent in this regard.<sup>4</sup> To provide further guidance to the bench, bar, and pro se defendants in view of the *Morris* decisions, the Comment has been revised to include the requirements set forth in *Morris I* for the contents of applications for stays filed separately from second or subsequent PCRA petitions:

In cases involving second or subsequent petitions when an application for a stay is filed separately from the PCRA petition, *Commonwealth v. Morris*, 565 Pa. 1, 771 A.2d 721, 741 (2001), provides that the separate stay application "must set forth: a statement of jurisdiction; if necessary, a statement that a petition is currently pending before the court; and a statement showing a likelihood of prevailing on the merits."

Finally, the Comment has been revised to include cross-references to new Rule of Appellate Procedure 3316 and amended Rule of Appellate Procedure 1702. These rules provide the procedures for the appeal from a grant of a stay in a death penalty case.

[Pa.B. Doc. No. 05-1940. Filed for public inspection October 21, 2005, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### LEHIGH COUNTY

#### Adoption of Rules of Juvenile Court Procedure for Delinquency Matters; File No. AD-1613-2005

#### Order

*And Now*, this 5th day of October, 2005, *It Is Ordered* that the following Rules of Juvenile Court Procedure for Delinquency Matters, in and for the 31st Judicial District of Pennsylvania composed of Lehigh County, be, and the same are, promulgated herewith, to become effective thirty (30) days after their publication in the *Pennsylvania Bulletin*.

*It Is Further Ordered* that seven (7) certified copies of this Order and the following Rules of Juvenile Court Procedure shall be filed with the Administrative Office of Pennsylvania Courts; that two (2) certified copies shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Juvenile Court Procedural Rules Committee of the Supreme Court of Pennsylvania; and that one copy shall be filed with the Clerk of Courts of Lehigh County.

*By the Court*

WILLIAM H. PLATT,  
*President Judge*

<sup>4</sup> See the Committee's explanatory Final Report, *supra*.

### Lehigh County Rules of Juvenile Court Procedure for Delinquency Matters

#### Leh.R.J.C.P. 102. Citation of Rules.

All juvenile court procedural rules promulgated by the Court of Common Pleas of Lehigh County shall be cited as Lehigh Rules of Juvenile Court Procedure ("Leh.R.J.C.P.")

#### Leh.R.J.C.P. 105. Search Warrants.

Leh.R.Cr.P. 202 (Approval of Search Warrant Applications by Attorney for the Commonwealth.) shall apply to search warrant applications in juvenile delinquency matters.

*Comment:* Leh.R.Cr.P. provides: "The District Attorney of Lehigh County having filed a certification pursuant to Pa.R.Crim.P. 202, search warrants, in all circumstances, shall not be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing."

#### Leh.R.J.C.P. 120. Definitions.

Unless the context clearly indicates otherwise, the words and phrases used in any juvenile court procedural rule adopted by the Court of Common Pleas of Lehigh County shall be given the same meaning as is given those words and phrases in the Pennsylvania Rules of Juvenile Court Procedure with the following exceptions and additions: (1) "Court," means the Court of Common Pleas of Lehigh County; (2) "Rule," means any rule of juvenile court procedure adopted by the Court of Common Pleas of Lehigh County; (3) "Clerk of Courts" means the Clerk of Courts of the Court of Common Pleas of Lehigh County; and (4) "except as otherwise provided," means except as provided by statute, by the Pennsylvania Rules of Juvenile Court Procedure, or by specific local juvenile court rule.

#### Leh.R.J.C.P. 121. Effective Dates of Rules.

(a) A Rule or amendment to a Rule shall become effective upon the date specified by the court in adopting or amending such rule, but in no case until after the requirements of Pa.R.J.C.P. 121(D) and (E) are met.

(b) If no effective date is specified, the Rule or amendment to the Rule shall become effective on the first day of January or July, whichever is earlier, following the thirtieth day after its adoption, filing and publication in the *Pennsylvania Bulletin* (Pa.B.).

#### Leh.R.J.C.P. 210. Arrest Warrants.

A. *Application* The following judges and magisterial district judges are designated by the President Judge as issuing authorities to receive and act upon applications for arrest warrants in juvenile delinquency proceedings initiated in and for the 31st Judicial District of Pennsylvania composed of Lehigh County:

1. All commissioned judges of the Court of Common Pleas of Lehigh County, all commissioned magisterial district judges in the 31st Judicial District of Pennsylvania, and any senior judge or senior magisterial district judge assigned to perform the duties of a judge or magisterial judge within the 31st Judicial District of Pennsylvania at the time of the application.

2. During normal business hours of the courts, such applications should normally be made to the magisterial district judge in whose district the offense(s) or any one offense is/are alleged to have occurred, or to a judge of the Court of Common Pleas regularly assigned to hear delinquency cases. After normal business hours and on holi-

days, these applications should normally be made to an on-call magisterial district judge. Nothing in this paragraph, however, shall diminish the authority of any judge or magisterial district judge designated in paragraph 1 of this order to receive and act upon such applications.

**Note:** This same designation was originally contained in an Order of Court dated September 30, 2005, and effective October 1, 2005. The Order of September 30, 2005, shall govern until this Rule becomes effective.

B. *Approval of Commonwealth.* The District Attorney of Lehigh County having filed a certification pursuant to Pa.R.J.C.P. 231, all applications for arrest warrants under Pa.J.C.P. 210 shall be approved by an attorney for the Commonwealth before the application for the warrant is submitted to an issuing authority.

#### Leh.R.J.C.P. 231. Written Allegation (Approval by an Attorney for the Commonwealth).

The District Attorney of Lehigh County having filed a certification pursuant to Pa.R.J.C.P. 231, all written allegations in which it is alleged that an act of delinquency graded as a felony was committed shall be received and approved by an attorney for the Commonwealth before any delinquency proceeding is commenced.

#### Leh.R.J.C.P. 330. Petition: Filing, Contents, Function (Filing by an Attorney for the Commonwealth).

The District Attorney of Lehigh County having filed a certification pursuant to Pa.R.J.C.P. 330, all petitions alleging a juvenile to be delinquent shall be filed only by an attorney for the Commonwealth.

[Pa.B. Doc. No. 05-1941. Filed for public inspection October 21, 2005, 9:00 a.m.]

### LEHIGH COUNTY

#### Designation of Issuing Authorities to Receive and Act upon Applications for Arrest Warrants in Juvenile Cases Pursuant to Pa.R.J.C.P. 210(A); File No. AD-1612-2005

#### Order

*And Now*, this 30th day of September, 2005, pursuant to the provisions of Pa.R.J.C.P. 210(A), *It Is Ordered* that the following judges and magisterial district judges be and are designated as issuing authorities to receive and act upon applications for arrest warrants in juvenile delinquency proceedings initiated in and for the 31st Judicial District of Pennsylvania composed of Lehigh County:

1. All commissioned judges of the Court of Common Pleas of Lehigh County, all commissioned magisterial district judges in the 31st Judicial District of Pennsylvania, and any senior judge or senior magisterial district judge assigned to perform the duties of a judge or magisterial judge within the 31st Judicial District of Pennsylvania at the time of the application.

2. During normal business hours of the courts, such applications should normally be made to the magisterial district judge in whose district the offense(s) or any one offense is/are alleged to have occurred, or to a judge of the Court of Common Pleas regularly assigned to hear delinquency cases. After normal business hours and on holidays, these applications should normally be made to an

on-call magisterial district judge. Nothing in this paragraph, however, shall diminish the authority of any judge or magisterial district judge designated in paragraph 1 of this order to receive and act upon such applications.

*It Is Further Ordered* that seven (7) certified copies of this Order shall be filed with the Administrative Office of Pennsylvania Courts; that two (2) certified copies shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Juvenile Court Procedural Rules Committee of the Supreme Court of Pennsylvania; and that one copy shall be filed with the Clerk of Courts for Lehigh County.

This Order Is Effective October 1, 2005.

*By the Court*

WILLIAM H. PLATT,  
*President Judge*

[Pa.B. Doc. No. 05-1942. Filed for public inspection October 21, 2005, 9:00 a.m.]

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## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that David S. Shamers having been suspended from the practice of law in the State of Delaware for a period of two years, the Supreme Court of Pennsylvania issued an Order dated October 7, 2005 suspending David S. Shamers from the practice of law in this Commonwealth for a period of two years, effective November 6, 2005. 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. 05-1943. Filed for public inspection October 21, 2005, 9:00 a.m.]

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# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 86 AND 89]

#### Bond Adjustment and Bituminous Mine Subsidence Control Standards

The Environmental Quality Board (Board) amends Chapters 86 and 89 (relating to surface and underground coal mining; general; and underground mining of coal and coal preparation facilities). The final-form rulemaking incorporates amendments necessary to bring the Commonwealth's regulatory program into conformance with Federal standards for State coal mining regulatory programs. The final-form rulemaking affects requirements regarding bonding, subsidence control, subsidence damage repair and water supply replacement at underground bituminous coal mines.

This order was adopted by the Board at its meeting of April 19, 2005.

##### A. Effective Date

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

##### B. Contact Persons

For further information contact Joseph G. Pizarchik, Director, Bureau of Mining and Reclamation, P. O. Box 8461, Rachel Carson State Office Building, Harrisburg, PA 17105-8461, (717) 787-5103; or Richard S. Morrison, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) website at [www.dep.state.pa.us](http://www.dep.state.pa.us).

##### C. Statutory Authority

The final-form rulemaking is adopted under the authority of section 7 of The Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) (52 P. S. § 1406.7), section 5 of The Clean Streams Law (52 P. S. § 691.5); section 4.2 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.4b); section 3.2 of the Coal Refuse Disposal Control Act (52 P. S. § 30.53b); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

Certain parts of this rulemaking are authorized under a Federal action that superseded sections 5.1(b), 5.2(g)—(h), 5.4(a)(3) and (c) and 5.5(b) of the BMSLCA (52 P. S. §§ 1406.5a(b), 1406.5b(g)—(h), 1406.5d(a)(3) and (c) and 1406.5e(b)) to the extent these statutory provisions conflicted with the Federal Surface Mining Control and Reclamation Act of 1977 (Federal SMCRA) (30 U.S.C.A. §§ 1201—1328). The Federal action effecting these changes was published at 69 FR 71551 (December 9, 2004).

##### D. Background and Summary

This final-form rulemaking satisfies requirements for maintaining a state primacy program under the Federal

SMCRA. The amendments in this final-form rulemaking pertain to Federally required program changes described in 30 CFR 938.16(iiii)—(kkkk), (mmmm)—(rrrr), (tttt)—(zzzz), (ccccc)—(ddddd), (ffff)—(uuuuu) and (wwwww)—(bbbbbb) (relating to required regulatory program amendments). These requirements were imposed by the United States Office of Surface Mining and Reclamation Enforcement (OSM) on December 27, 2001, in conjunction with its partial disapproval of Pennsylvania program amendment PA-122, which consisted of the 1994 amendments to BMSLCA and associated regulatory amendments. A detailed history of the events leading up to the December 27, 2001, OSM rule is provided in the preamble to the Board's proposed rulemaking published at 33 Pa.B. 4554 (September 13, 2003).

The amendments in this final-form rulemaking represent the outcome of discussions between the Department and the OSM relative to the fulfillment of requirements in the December 27, 2001, rule. Some of the amendments represent changes made in direct response to the OSM's December 27, 2001, rule and some represent alternate solutions agreed to by the Department and the OSM during the course of discussions. Several of the amendments reflect changes that were not specifically required by the OSM but which serve to clarify or simplify regulatory requirements in the wake of required changes.

Most of the amendments in this final-form rulemaking have been formally approved by the OSM. In September 2003, the Department submitted the Board's proposed rules, published at 33 Pa.B. 4554, to the OSM as a formal program amendment. The amendment, subsequently designated as PA-143, was approved by the OSM at 69 FR 71528 (December 9, 2004). The OSM approval covered all of the amendments included in this final-form rulemaking except those that have changed between proposed and final-form rulemaking. These interim changes will be submitted to the OSM in the form of a separate program amendment.

Several of the final-form amendments are predicated on an OSM action superseding provisions of the BMSLCA that were found to be inconsistent with the Federal SMCRA. The Federal action, which is authorized by section 505(b) of the Federal SMCRA (30 U.S.C.A. § 1255) and 30 CFR 730.11(a) (relating to inconsistent and more stringent State laws and regulations), became effective on December 9, 2004. The Federal action effectively nullified the following provisions of the BMSLCA.

1) Section 5.1(b), which requires a landowner to file a water supply claim within 2 years of the date of effect, is superseded to the extent it would limit an operator's liability to restore or replace a water supply covered under section 720 of the Federal SMCRA (30 U.S.C.A. § 1309).

2) Section 5.2(g), which allows mine operators to settle water supply claims through compensation, is superseded to the extent it would limit an operator's liability to restore or replace a water supply covered under section 720 of the Federal SMCRA.

3) Section 5.2(h), which limits the Department's authority to intervene in the settlement of a water supply claim, is superseded to the extent it would preclude the Department from requiring restoration or replacement of a water supply covered under section 720 of the Federal SMCRA.

4) Section 5.4(a)(3), which requires dwellings and related structures to be in place as of certain specified dates and within certain specified areas, is superseded to the extent it would limit an operator's liability to repair or compensate for damage to structures covered under section 720 of the Federal SMCRA.

5) Section 5.4(c), which provides a release of liability if an operator is denied access to perform a premining or postmining survey of a structure, is superseded to the extent it would limit an operator's liability to repair or compensate for subsidence damage to a structure covered under section 720 of the Federal SMCRA.

6) The portion of section 5.5(b) that requires a landowner to file a structure damage claim within 2 years of the date of damage is superseded to the extent it would limit an operator's liability to repair or compensate for subsidence damage to a structure covered under section 720 of the Federal SMCRA.

The following is a description of the final-form rule-making by section.

*§ 86.151(b)(2) (period of bonded liability)*

Section 86.151(b)(2) (relating to period of liability) is amended to clarify that an operator's obligation to maintain a subsidence bond ends 10 years after the completion of "underground mining operations." The amendment avoids potential confusion over whether the period of bonded liability runs from the completion of "underground mining operations," an event typically marked by the reclamation of the last shaft or adit, or the completion of "underground mining activities," an event typically marked by the cessation of mine pool maintenance activities. Subsidence bonds do not cover liability for water supply replacement so there is no reason to maintain coverage for more than 10 years after completion of underground mining operations. This amendment was not required by the OSM, but is necessary to clarify subsidence bonding requirements in the wake of other changes regarding the duration of liability for water supply effects.

*§ 86.152(a) (bond adjustments)*

Section 86.152(a) (relating to bond adjustments) is amended to incorporate several changes regarding the periodic adjustment of reclamation and subsidence bonds. It allows the Department to specify periodic times and set schedules for reevaluation and adjustment of bond amounts. It also obligates the Department to perform periodic evaluations of bonds and to adjust bond amounts when it determines that the area requiring bond coverage has increased or decreased or that the cost of future reclamation has changed or that the projected subsidence damage repair liability has changed. These changes are in response to the OSM requirements in 30 CFR 938.16(ccccc) and in a letter dated September 22, 1999. Language is also added to clarify that the provisions of this section may not be used to expand the scope of subsidence bonds to include water supply replacement liability or other liabilities that are not expressly provided in section 6(b) of the BMSLCA (52 P. S. § 1406.6).

*§§ 86.1 and 89.5 (definitions of "underground mining activities" and "underground mining operations")*

The definition of "underground mining activities" is amended to clarify that management of a postclosure mine pool is an underground mining activity. The amended definition in conjunction with § 89.152(a)(3)(ii) and (b)(2) establish a period of operator liability for water supply effects extending from the time of undermining

until 3 years after the mine pool has stabilized. This amendment satisfies the Federal requirements in 30 CFR 938.16(mmmm) and (xxxxx).

The definitions of "underground mining activities" and "underground mining operations" are also amended to clarify that the term "support facilities" as used in the context of "underground mining operations" refers to support facilities located underground as opposed to support facilities located at the land surface. This is an incidental change that was not required by the OSM but which serves to clarify the scope of the term "underground mining operations."

*§ 89.5 (definitions of "EPACT structures" and "EPACT water supplies")*

Definitions of "EPACT structures" and "EPACT water supplies" are added to § 89.5 (relating to definitions). These terms are defined to include structures and water supplies covered by section 720 of the Federal SMCRA, as amended by the Energy Policy Act of 1992 (EPACT) (42 U.S.C.A. §§ 13201—13556), and are used throughout the remainder of the chapter to distinguish structures and water supplies subject to specific requirements derived from the Federal regulations. These terms and definitions were not specifically required by the OSM but are incorporated to facilitate references of specific groups of structures and water supplies.

*§ 89.5 (deleted definition of "permanently affixed appurtenant structures")*

The definition of "permanently affixed appurtenant structures" is deleted from § 89.5. Coverage of "permanently affixed appurtenant structures" is described in amended § 89.142a(f) (relating to subsidence control: performance standards), regarding repair of damage to structures, which distinguishes permanently affixed appurtenant structures that qualify as EPACT structures from other types of permanently affixed appurtenant structures. This deletion of the definition of "permanently affixed appurtenant structures" from § 89.5 was not specifically required by the OSM but is indirectly related to the Federal requirement in 30 CFR 938.16(fffff).

*§ 89.5 (deleted definition of "de minimis cost increase")*

The definition of "de minimis cost increase" is deleted from § 89.5. The term is no longer used in Chapter 89 following amendments to § 89.145a(f)(5) (relating to water supply replacement: performance standards), which were made between proposed and final-form rulemaking. This amendment relates to Federal requirements in 30 CFR 938.16(ddddd) and (uuuuu).

*§ 89.141(d) (plans for mining beneath EPACT structures)*

Section 89.141(d) (relating to subsidence control: application requirements) is amended to require a description of the measures an operator will take to protect EPACT structures. The descriptions are to be based on subsidence control performance measures described in § 89.142a(d)(1)(i) if mining will result in planned subsidence or § 89.142a(d)(1)(ii) if mining will not result in planned subsidence. These amendments are incorporated to satisfy the Federal requirements in 30 CFR 938.16(ggggg) and (hhhhh).

*§ 89.142a(b) (access for structure surveys)*

Section 89.142a(b) is amended to incorporate a new provision which advises structure owners to allow mine operators access to conduct premining and postmining surveys of their structures and property. The subsection points out the purpose and importance of premining and

postmining surveys and is intended to encourage structure owners to allow operators access for performing surveys. Although the provisions of this subsection are not binding, the Department may consider denial of access a basis for supporting an operator's claim that damage minimization is unfeasible. This provision has been added since the publication of the proposed rule-making.

*§ 89.142a(c) (suspension of mining)*

Section 89.142a(c) is amended to authorize the Department to suspend mining beneath a public building, public facility, church, school, hospital, impoundment with a storage capacity of 20 acre-feet or more, body of water with a volume of 20 acre-feet or more or body of water or aquifer that serves as a significant source to a public water supply system, if an operator's previous measures have failed to prevent material damage or failed to maintain the reasonably foreseeable use of these structures or features. This amendment is incorporated to satisfy the Federal requirement in 30 CFR 938.16(iiiiii).

*§ 89.142a(d) (requirements for mining beneath EPACT structures)*

Amended § 89.142a(d) establishes specific standards for mining beneath EPACT structures other than those subject to the more stringent protection standards in § 89.142a(c). Subsection (d)(1)(i) sets forth standards that apply to underground mining that results in planned subsidence and subsection (d)(1)(ii) sets forth standards that apply to underground mining that does not result in planned subsidence.

An operator using a mining technology that results in planned subsidence is required to take measures to minimize material damage, unless the structure owner consents, in writing, to allow material damage or the operator demonstrates that it would cost more to perform the necessary damage minimization measures than to repair the resultant damage. An operator is not, however, relieved of the obligation to perform damage minimization measures, if the resultant damage would constitute a threat to health or safety.

An operator using a mining technology that does not result in planned subsidence is required to take measures to prevent material damage to EPACT structures using measures, such as backstowing or backfilling of voids, leaving solid coal or coal pillars in place for support or performing surface measures that will enable the structures to withstand subsidence if and when it occurs.

The amendments to § 89.142a(d)(1) are in response to the Federal requirement in 30 CFR 938.16(jjjjj). Subsection (d)(3) is also incorporated to reflect the provision in section 5(e) of the BMSLCA (52 P. S. § 1406.5) that general requirements to prevent or minimize material damage do not prohibit planned subsidence in a predictable and controlled manner or the standard method of room and pillar mining.

*§ 89.142a(f)(1) (prompt response to structure damage claims)*

Section 89.142a(f)(1) is amended to clarify an operator's obligation to repair or compensate for structure damage in a prompt manner. The term "prompt" is not defined but is interpreted to mean as soon as practical considering site conditions, potential repair and compensation alternatives and other relevant factors. This requirement is incorporated to satisfy Federal requirements in 30 CFR 938.16(tttt) and (kkkkk).

*§ 89.142a(f)(1) (coverage of permanently affixed appurtenant structures and improvements)*

Section 89.142a(f)(1) is amended to incorporate several Federally required changes with respect to "permanently affixed appurtenant structures and improvements" covered by subsidence damage repair and compensation provisions.

Subsection (f)(1)(iii), which pertains solely to EPACT structures, now provides coverage for all structures and improvements that are appurtenant to dwellings used for human habitation, in place at the time of mining and susceptible to damage by underground mining operations. Former restrictions requiring structures and improvements to be in place on specific dates prior to mining and located within the mine boundaries are deleted in the final-form rulemaking. The former requirement that structures must be "securely attached to the land surface," as incorporated through the former definition of "permanently affixed appurtenant structures" in § 89.5, is also deleted. These amendments are in response to Federal requirements in 30 CFR 938.16(uuuu), (ffff) and (lllll) and the OSM's partial supersession of section 5.4(a)(3) of the BMSLCA.

Subsection (f)(10)(i) is also amended to provide that structures used in conjunction with publicly accessible commercial, industrial and recreational buildings must be "securely attached to the land surface" to qualify for damage repair and compensation. This provision retains the existing interpretation of section 5.4(a)(1) of the BMSLCA, which is not affected by the OSM requirements.

*§ 89.143a(c) (filing structure damage claims)*

Section 89.143a(c) (relating to subsidence control; procedure for resolution of subsidence damage claims), as amended, allows owners of damaged structures to file claims with no minimum waiting period. The amendment is in response to 30 CFR 938.16(xxxx) and (nnnnn) of the OSM rule.

*§ 89.143a(c) (statute of limitations for filing structure damage claims)*

Section 89.143a(c) is amended to clarify the time frames in which landowners may file claims for structure damage with the Department. The amendment deletes the 2-year claim filing deadline as it relates to EPACT structures but retains the deadline for claims involving damage to non-EPACT structures. This amendment satisfies the requirements of 30 CFR 938.16(xxxx) and (nnnnn) while retaining the provisions of section 5.5(b) of the BMSLCA, which were not affected by the OSM's supersession.

*§ 89.143a(d) (investigations and orders relating to the repair of structure damage)*

Amended § 89.143a(d)(1) imposes an obligation on the Department to provide investigation results to the property owner and mine operator within 10 days of completing a structure damage claim investigation. This amendment satisfies the Federal requirement in 30 CFR 938.16(yyyy).

Subsection (d)(3), which describes actions the Department will take upon finding that an operator's underground mining operations caused damage to a structure, is amended to clarify the Department's authority to require prompt repair or prompt compensation for structure damage. Amended subsection (d)(3) clarifies that the only reason for extending the time for compliance with a Department order is the Department's determination that



further subsidence damage may occur to the same structure. These amendments are in response to Federal requirements in 30 CFR 938.16(zzzz) and (ooooo).

*§ 89.144a (denial of access for premining or postmining structure surveys)*

Section 89.144a (relating to subsidence control: relief from responsibility) is amended to incorporate two provisions regarding the effect of denying access to an operator to perform a premining or postmining structure survey or damage minimization measures. Amendments to subsections (a) and (b) clarify that denial of access to an EPACT structure does not automatically result in a release of responsibility for damage as it does in the case of a non-EPACT structure. New subsection (b) provides that, in the case of an EPACT structure an operator is responsible for all damage that the Department or the structure owner can show, by a preponderance of evidence, to be the result of the operator's underground mining operations. This amendment is made in response to the Federal requirements in 30 CFR 938.16(ppppp) and is authorized under the OSM's partial supersession of section 5.4(c) of the BMSLCA.

The second amendment to § 89.144a pertains to damage that could have been prevented if an operator had been provided access to perform damage minimization measures. New subsection (c) provides that an operator is not responsible for the portion of structure damages, which the operator can show, by a preponderance of evidence, could have been prevented had the structure owner provided the operator access to perform a premining survey and to implement damage minimization measures. This amendment was added between proposed and final-form rulemaking in response to a public comment. It was not required by the OSM.

*§ 89.145a(a) (water supply survey requirements)*

Amendments to § 89.145a(a)(1) revise the deadline for performing premining water supply surveys. Under the revised standard, an operator must complete a premining survey prior to the time a water supply is susceptible to mining-related effects. This creates a flexible standard which allows the Department to establish specific time frames or distance limits based on local geologic and hydrologic conditions and the observed effects of previous mining. Requirements regarding the timing of premining surveys will be established by the Department at the time of permit issuance or permit renewal. The deadlines established by this section do not supersede the Department's authority to require water quality and quantity information at the time of permit application or permit renewal for all water supplies that may be affected during the succeeding permit term in accordance with § 89.34(a)(1)(i) (relating to hydrology).

Amended subsection (a)(1) establishes specific conditions under which the collection of some or all survey information may be waived. Under the amended paragraph, an operator is only excused from collecting information if required collection measures pose an inconvenience to the landowner. This exception is intended to address situations when an operator would have to damage a building to gain access to a well or spring.

The amendments to § 89.145a(a)(1) reflect Federal requirements set forth in 30 CFR 938.16(qqqqq).

*§ 89.145a(b) (prompt replacement of water supplies)*

Section 89.145a(b) is amended to clarify an operator's obligation to "promptly" restore or replace water supplies affected by underground mining operations. The term

"promptly" is not defined but is intended to ensure that restoration or replacement is accomplished as soon as practical considering site-specific conditions.

Section 89.145a(b) is also amended to clarify that a restored or replacement water supply must be capable for serving both the premining and reasonably foreseeable uses of the original water supply.

The amendments to § 89.145a(b) reflect Federal requirements in 30 CFR 938.16(iiii) and (rrrrr).

*§ 89.145a(e) (provision of temporary water)*

Section 89.145a(e) is amended to incorporate several new requirements applicable to situations when EPACT water supplies are affected by underground mining activities. Subsection (e)(2) provides that temporary water must be provided "promptly" after the operator or the Department determines that effects are due to the operator's underground mining activities and that the landowner or water user is without a readily available alternate source of water. The requirement for prompt action applies regardless of whether the affected supply lies inside or outside the rebuttable presumption area. Amended subsection (e)(3) requires that temporary water service be sufficient to satisfy all of the affected water user's needs. A water user's needs are considered to include all needs that existed prior to impact and additional needs that arise between the time of impact and the time a permanent replacement water supply is established, provided those needs were within the capacity of the original water supply. These amendments are in response to Federal requirements in 30 CFR 938.16(sssss) and (ttttt).

*§ 89.145a(f) (compensation for increased cost of restored or replacement water supply)*

Section 89.145a(f) is amended to establish revised standards applicable to the costs of operating and maintaining restored or replacement water supplies. A restored or replacement water supply that is no more costly to operate and maintain than the original water supply is considered to meet the requirements of this section. If the operation and maintenance costs of the restored or replacement water supply are higher than those of the original water supply, the operator must make provisions to permanently cover the increased costs. Upon agreement with the landowner, the operator can satisfy its obligation regarding increased cost through a one time payment in an amount covering the present worth of the increased annual operation and maintenance cost for a period agreed to by both parties.

Section 89.145a(f) was amended between proposed and final rulemaking to establish the same cost criteria for all water supplies covered by BMSLCA rather than establishing separate cost criteria for EPACT and non-EPACT water supplies. The amendments with respect to EPACT water supplies were driven by the Federal requirements in 30 CFR 938.16(ddddd) and (uuuuu).

*§ 89.146a(c) (department investigation of water supply claims)*

Amended 86.146(c) (relating to water supply replacement: procedure for resolution of water supply damage claims) imposes an obligation on the Department to provide investigation results to the property owner and mine operator within 10 days of completing a water supply claim investigation. This amendment satisfies the Federal requirement in 30 CFR 938.16(wwwww).

*§ 89.152 (special provisions relating to water supply replacement)*

New § 89.152(a)(1) (relating to water supply replacement: special provisions) establishes requirements applicable to situations when an EPACT water supply has been affected and cannot be restored or replaced with a water supply meeting the criteria in § 89.145a(f). In these situations, an operator is required to compensate the property owner for the reduction in the fair market value of the property or to purchase the property for its fair market value immediately prior to the time the water supply was affected. An operator may only pursue one of the aforementioned compensation remedies if the Department determines that a suitable water supply cannot be developed.

New subsection (a)(2) provides for agreements between operators and landowners, which waive the restoration or replacement of an EPACT water supply. These agreements are subject to the Department's prior determination that a replacement water supply can be feasibly developed for the property on which the affected water supply was located. An operator may be required to submit information demonstrating the availability of water for future development if the information needed to make this determination is not included in the permit application.

New subsection (a)(3) presents three statutory defenses an operator may raise in defending against a claim of liability for contamination, diminution or interruption of an EPACT water supply. One defense is that the alleged problem existed prior to and was not worsened by the operator's underground mining activity. This defense must be based on valid premining survey results documenting that the problem existed prior to the time the water supply was susceptible to the effects of the operator's underground mining activities. Another defense is that the problem occurred more than 3 years after the completion of all "underground mining activities"—a term which includes all activities involved in the operation of an underground coal mine, including activities associated with the maintenance of the postclosure mine pool. The third defense is that the problem is due to a factor other than the operator's underground mining activity. The list of available defenses under § 89.152a(a)(3) does not include the defense based on the landowner's or water user's failure to submit a claim within 2 years of the date of contamination, diminution or interruption. This defense is no longer available in cases involving EPACT water supplies following the OSM's partial supersession of section 5.1(b) of the BMSLCA.

The amendments are incorporated in § 89.152 to satisfy Federal requirements in 30 CFR 938.16(nnnn), (oooo), (qqqq) and (rrrr). Restrictions regarding the use of compensation in settlements involving EPACT water supplies are authorized under the OSM's partial supersession of section 5.2(g) and (h) of the BMSLCA. The elimination of the 2-year statute of limitations on filing claims for effects on EPACT water supplies is authorized under the OSM's partial supersession of section 5.1(b) of the BMSLCA.

*Global changes regarding effects of "underground mining operations"*

Various regulations pertaining to information requirements and performance standards for the control and repair of subsidence damage are amended by replacing the term "underground mining" with "underground mining operations." The term "underground mining opera-

tions" is defined in § 89.5 to include underground construction, operation and reclamation of shafts, adits, support facilities located underground, in situ processing and underground mining. In comparison, the term "underground mining" only includes the extraction of the coal. These changes affect § 89.141(d) and (d)(9)—(11), regarding the content of subsidence control plans; § 89.142a(a), regarding general requirements for subsidence control; § 89.142a(f)(1) and (2), regarding repair of damage to structures; § 89.142a(g)(1), regarding the protection of utilities; § 89.142a(h)(1) and (2), regarding the protection of perennial streams; § 89.142a(i), regarding prevention of hazards to human safety; § 89.143a(a), regarding claims of subsidence damage; and § 89.143a(d)(1)—(3), regarding Department investigations and enforcement actions. These amendments are incorporated to satisfy Federal requirements in 30 CFR 938.16(mmmmm) and (bbbbbb).

*Editorial changes*

The final-form rulemaking includes several changes that are intended to support or clarify regulations amended by this final-form rulemaking.

Section 89.141(d)(3) is amended to delete the list of measures that can be used to protect public buildings and facilities, churches, schools, hospitals, impoundments with storage capacities of 20 acre-feet or more, bodies of water with volume of 20 acre-ft or more and aquifers and bodies of water that serve as significant sources to public water supply systems. The measures in former paragraph (3) are only a subset of a larger list of measures that may be used for protecting this group of structures and features. The complete list of measures appears in the performance standard in § 89.142a(c). To avoid confusion, the incomplete list of measures is deleted from § 89.141(d)(3), which is simply an information requirement.

In § 89.142a(c)(1), the term "surface features" is replaced with the term "features" to more accurately describe the types of features within the referenced group. The features described in paragraph (1) include aquifers, which are usually not regarded as "surface features."

Section 89.142a(d) is amended to incorporate new subsection (d)(3), which reflects the provision in section 5(e) of the BMSLCA that "nothing in this subsection shall be construed to prohibit planned subsidence in a predictable and controlled manner or the standard method of room and pillar mining." The provision is included to more fully reflect the intent of paragraph 5(e) of the BMSLCA, which serves as the statutory basis for the new damage prevention and minimization requirements in § 89.142a(d)(1).

The headings of one section and one subsection are amended to more accurately reflect their revised content. The heading of § 89.142a(d) is changed from "general measures to prevent or minimize subsidence" to "protection of certain EPACT structures and agricultural structures." The heading of § 89.152 is changed from "water supply replacement: relief from responsibility" to "water supply replacement: special provisions."

In § 89.143a, the requirement for the Department to notify a mine operator of the receipt of a structure damage claim is moved from subsection (c) to subsection (d). The purpose of this amendment is to clarify and separate Department responsibilities from the responsibilities of landowners.

The final-form rulemaking also includes various stylistic changes that were made to conform to standards for drafting regulations.

The amendments to § 86.152(a) were submitted to the Mining and Reclamation Advisory Board (MRAB) because this section applies to bond adjustments for surface mining activities as well as bond adjustments for underground mining activities. The MRAB endorsed the proposed rulemaking at its meeting on April 24, 2003, and the final-form rulemaking at its meeting on January 6, 2004. The other provisions of this final-form rulemaking were not presented to the MRAB because they pertain exclusively to underground mining activities and are outside the purview of the MRAB.

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

The Board approved publication of the proposed rulemaking at its meeting on July 15, 2003. The proposed rulemaking was published at 33 Pa.B. 4554. Public hearings were held on October 15, 2003, in Indiana, PA, and on October 16, 2003, in Washington, PA. Comments were accepted from September 13, 2003, to November 12, 2003.

Twenty persons submitted timely comments in response to the proposed rulemaking. Commentators included the Pennsylvania Coal Association, Citizens for Pennsylvania's Future, Wheeling Creek Watershed Conservancy, Mountain Watershed Association, Ten Mile Protection Network, Concern About Water Loss due to Mining and 14 private citizens. The Independent Regulatory Review Commission (IRRC) also submitted comments in regard to the proposed rulemaking.

The following is a discussion of the comments received during the public comment period, organized according to subject matter.

#### *Period of liability for water supply effects*

One commentator objected to changes that would expand the definition of "underground mining activities" to include "post closure mine pool maintenance." The commentator noted that this amendment would effectively extend an operator's liability for water supply effects as much as 25 years into the future. The commentator considered this amendment an attempt to invalidate the provisions of section 5.2(e)(2) of the BMSLCA, which the commentator interpreted as limiting liability to a 3-year period after mining in a specific area of a mine. The commentator also noted that this change was not specifically required by the OSM.

The Department does not agree with the commentator's assertions. The amendment to the definition of "underground mining activities" is intended to clarify that liability for water supply effects does not expire prior to the date regulatory jurisdiction would end under the Federal regulatory program. Although this amendment is not specifically required by the OSM, it clarifies a concept that is essential to demonstrating compliance with Federal requirements relating to the duration of liability. Under the Federal program, liability for water supply effects has no termination date and remains in effect for as long as the OSM maintains regulatory jurisdiction over a mine site. OSM jurisdiction normally extends for the duration of mining and reclamation operations and until 5 years after the final augmented seeding. To be as effective, the regulations must provide a period of liability that expires no sooner than the date on which the OSM would normally terminate jurisdiction. These regulations meet this requirement by clarifying that the liability

created by section 5.1(a)(1) of the BMSLCA and terminated by section 5.2(e)(2) of the BMSLCA extends from the time of mining until 3 years after the completion of the last "underground mining activity." In most cases the final "mining activity" will be the maintenance of the postclosure mine pool. This period of liability is based on a reasonable interpretation of section 5.2(e)(2) of the BMSLCA, which extends liability 3 years after the occurrence of "mining activity."

The amendment to the definition is not an attempt to circumvent the intent of the General Assembly. Section 5.2(e)(2) of the BMSLCA provides a release of liability if contamination, diminution or interruption occurs more than 3 years after "mining activity." Considering that section 5.1(a) of the BMSLCA establishes liability for all water supply effects caused by "underground mining operations," there is no reason to conclude that the liability referred to in section 5.2(e)(2) of the BMSLCA would be limited to effects arising from the act of coal extraction. Water supply effects can result from various "mining activities" such as underground pumping operations, the drilling of shafts and mine entries, the removal of underground roof supports, surface support areas and the control of the postclosure mine pool. It is reasonable to conclude that the 3-year period referred to in section 5.2(e)(2) of the BMSLCA was intended to run from the time of occurrence of the last "mining activity" that could result in water supply contamination, diminution or interruption.

The interpretation that liability extends from the time of the last mining activity is not new. This interpretation was explained in the final-form rulemaking published at 28 Pa.B. 2761 (June 13, 1998) on mine subsidence control, subsidence damage repair and water supply replacement. The preamble at 28 Pa.B. 2778 clarifies that liability for water supply impacts "extends from the time of underground mining to the period ending 3 years after reclamation has been completed." The preamble discussion goes on to explain that "this [period] should be sufficient to cover virtually all water supply impacts resulting from the underground mine."

Contrary to the commentator's assertion, it is appropriate to clarify the duration of liability through regulation. As illustrated by the commentator's statements, the statutory phrase "mining activity" is subject to differing interpretations, making obvious the need to clarify this matter with a regulatory definition.

Separate from the issue of statutory interpretation, the Commonwealth's interests are best served by ensuring that operators are held liable for effects arising from the development of postclosure mine pools. These pools, which develop in mine workings after cessation of pumping, have been documented to cause contamination of adjacent water supplies many years after the time of coal extraction. It is important that the regulations provide an effective remedy for these problems.

Another commentator recommended that § 89.152(a)(2) be amended to delete all references to a 3-year period of liability. The commentator observed that some water supplies could go without replacement if losses occurred more than 3 years after mining activity ceased, even though the affects were due to underground mining activities.

Although the Department understands the commentator's concerns, it would be inappropriate to delete references to the 3-year period in section 5.2(e)(2) of the BMSLCA. In the Department's experience, the liability

period afforded by § 89.152(a)(2) should be sufficient to cover virtually all water supply problems resulting from the underground mining activities. Since this level of protection is available under the current provisions of the BMSLCA, it is the preferred means of satisfying the OSM requirements relating to the duration of liability.

*Distinction between EPACT and non-EPACT structures and water supplies*

Two commentators expressed overall objections to amendments that establish separate requirements for EPACT and non-EPACT structures and water supplies. The commentators regarded this "dual" system of regulation as cumbersome and overly complicated. One commentator further asserted that the distinctions were unjustified and not unauthorized under the existing law of the Commonwealth. One commentator also thought the resulting system would result in unequal protection of surface properties.

Although the Department acknowledges the commentators' concerns, a "dual" system is necessary if the Commonwealth's regulatory program is to comply with Federal requirements for state primacy programs and, at the same time, maintain conformance with the BMSLCA. The OSM action at 69 FR 71551 superseded the provisions of the BMSLCA that were in conflict with the Federal SMCRA, laying the foundation for the two class system. The OSM's action effectively nullifies certain statutes of limitations, releases of liability and compensation options as they relate to EPACT structures and water supplies. These provisions do, however, remain in effect for structures and water supplies that are covered by the BMSLCA but are outside the scope of the Federal regulations. Consequently, there is a need to distinguish between these two different classes of structures and water supplies.

*Bond adjustments*

One commentator recommended that bond amounts should be sufficient to cover the replacement value of individual homes and properties.

The Department does not agree with the commentator's recommendation. Neither the State nor the Federal program requires a bond covering the total replacement value of all homes and properties in advance of mining. The Department has established bond calculation procedures that take into account the fair market value of the property that is expected to be damaged during the succeeding term of the permit, the level of damage that property is expected to sustain and the amount of damage that may accumulate prior to the time enforcement is warranted. These procedures are described in Technical Guidance 563-2504-101. The OSM has reviewed the Department's bond calculation procedures and found them to be no less effective than the Federal regulations, which require bonds to be posted only in cases when damage has not been repaired within 90 days.

Two commentators asserted that bonding requirements should be revised to include the costs of water supply replacement. One of the commentators found fault with the Department's proposal to use liability insurance as the basis for assuring the replacement of affected water supplies, citing several examples of situations when insurance proved ineffective in securing timely water supply replacement.

Although the Department recognizes the commentator's concern, the BMSLCA provides no basis for requiring bonds to ensure water supply replacement. Recognizing this limitation, the Department decided to address this

matter through liability insurance, which is required by § 86.168 (relating to terms and conditions for liability insurance) as a condition for maintaining a mining license. Section 86.168, which sets forth the terms and conditions for liability insurance, requires all policies to cover loss or diminution in quantity or quality of public or private sources of water in an amount at least equal to the general liability portion of the policy. Section 86.168 further provides that the amount of this coverage must be at least \$500,000 per occurrence and \$1 million aggregate.

In its proposal to the OSM, the Department indicated it would review permittees' insurance policies at the time of permit issuance and annually thereafter to ensure that coverage is sufficient to restore or replace all water supplies that may be damaged and need to be replaced at any point during the mining operation. After reviewing the Department's proposal and the provisions of § 86.168, the OSM concluded that the assurance of water supply replacement provided by the Commonwealth's regulations was no less effective than that provided by the Federal regulations. See 69 FR 71528. The OSM also observed that the Federal regulations in 30 CFR 800.14(c) (relating to bonding and insurance requirements) allow the use of insurance instead of bond for purposes of assuring water supply replacement.

As a matter of record, the Department recently resolved one of the cases cited as an example of the ineffectiveness of liability insurance. The case involved several water supply claims that were pending resolution when the operator declared bankruptcy. In this case, the Department successfully intervened on behalf of the affected property owners to have the insurance company pay for the replacement of all affected water supplies. This case illustrates that liability insurance can serve as an effective means of ensuring water supply replacement in cases when an operator defaults on his liability.

Since the time of the proposed rulemaking, the Department has performed an analysis to determine whether mine operators are carrying sufficient amounts of insurance to cover the replacement of affected water supplies. Based on a review of claims filed during the past 5 years, the Department found that the minimum coverage required by § 86.168 was sufficient to cover water supply replacement liability in all cases. There was one case when the Department took action to ensure that the insurance policy covered all pending and potential water supply replacement claims and there was one case when an operator's liability came close to the minimum limits (which apply to claims filed within the 1-year term of an insurance policy). The Department also annually reviews the adequacy of insurance for pending and potential future claims before renewing an operator's mining license. The results of this analysis further illustrate the effectiveness of liability insurance as a tool for ensuring water supply replacement.

*Requirements for mining beneath EPACT structures*

One commentator asserted that it will be impossible for operators to comply with the new damage minimization and prevention standards in § 89.142a(d)(1), if § 89.144a is amended to allow owners of EPACT structures to deny access for premining surveys.

The Department disagrees with the commentator's assertion. Section 89.142a(d)(1)(i) only requires operators to minimize material damage to the extent technologically and economically feasible. Under most circumstances,

denial of access would make it technologically and economically unfeasible to perform damage minimization measures.

One commentator recommended amending § 89.142a(d) to prevent structure damage when mining results in planned subsidence.

The Department does not agree with this recommendation. The purpose of amending § 89.142a(d) is to ensure that the protection afforded EPACT structures is no less effective than the protection afforded by the Federal regulations. The corresponding Federal regulations allow operators to minimize rather than prevent material damage when using mining technology that results in planned subsidence. The only exceptions are when underground mining operations would affect a public building, church, school or hospital in which case material damage must be prevented. The amendments to § 89.142a(d) incorporate these same provisions.

One commentator thought the amendments to § 89.142a(d) would diminish the protection afforded to public buildings, churches, schools and hospitals and certain impoundment under § 89.142a(c). The commentator observed that § 89.142a(d)(1)(i) requires operators using mining methods that result in planned subsidence to minimize rather than prevent damage to noncommercial buildings—a broad term that includes public buildings, churches and hospitals.

The commentator's concern is acknowledged; however, § 89.142a(d)(1)(i) includes language that addresses this issue. Subsection (d)(1) specifically excludes noncommercial buildings protected under § 89.142a(c). This exclusion clarifies that noncommercial buildings enumerated in § 89.142a(c) are to be protected in accordance with § 89.142a(c). This clarification was included in the proposed rulemaking and is not changed in the final-form rulemaking. It is further noted that § 89.142a(d)(1)(i) does not pertain to the impoundments and water bodies enumerated in § 89.142a(c).

One commentator recommended changing § 89.142a(d)(1)(i)(B) to place decisions regarding the feasibility of damage minimization and threats to human health and safety in the hands of the surface owner.

The Department does not agree with this recommendation. Section 89.142a(d)(i), which is based on the Federal regulation in 30 CFR 817.121(a)(2)(ii) (relating to subsidence control), does not identify the party responsible for determining the feasibility of damage minimization measures or the party responsible for identifying threats to human health and safety. In most cases, the mine operator will make preliminary decisions regarding these matters, subject to oversight and intervention by the Department. Property owners who are notified of impending mining may inquire about the operator's plans for damage minimization and, if dissatisfied, request the Department to evaluate the plans for conformance with § 89.142a(d)(i).

#### *Prompt response to structure damage claims*

One commentator asserted that it is inappropriate for the Department to cease adherence to the requirements of section 5.5(b) of the BMSLCA which provides a 6-month period for operators and homeowners to negotiate settlements without Department involvement. The commentator further asserted that there is no reason to allow owners of non-EPACT structures to file claims sooner than 6 month after damage, because these structures are outside the scope of the Federal regulations.

The Department acknowledges the commentator's position, but notes that the former regulatory provisions that barred the filing of claims prior to the end of the 6-month period were removed to comply with OSM requirements. Moreover, section 9 of the BMSLCA (52 P. S. § 1406.9) gives the Department broad authority to issue orders "as are necessary to aid in the enforcement of the provisions of this act." The Department notes that although section 9 of the BMSLCA allows the Department to issue orders prior to the expiration of the 6-month negotiation period, it rarely has cause to do so. Subsidence is typically incomplete within the 6-month time interval so the full extent of damage remains unknown. Department actions prior to the expiration of the 6-month negotiation period would involve primarily orders for emergency repairs necessary to address health, safety or nuisance concerns. It is further noted that the provisions of section 9 of the BMSLCA apply to both EPACT structures and other structures protected under the BMSLCA.

One commentator recommended that the regulations be revised to allow landowners to choose who will repair the damage to their properties.

Although the Department acknowledges the commentator's recommendation, it notes that neither the BMSLCA nor the Federal regulations give landowners the specific right to choose who will repair subsidence damage. Under both programs the mine operator is the party responsible for making or arranging for repairs or providing compensation to the landowner. If there is a dispute over the scope of repair work or the standards to be met, the Department would make the final decision after considering the wishes of both the mine operator and the landowner.

One commentator recommended revising the regulations to require the Department to pay subsidence damage claims out of the Mine Subsidence Insurance Program to ensure prompt, quality repairs and to subsequently seek reimbursement from the operator.

The Department does not support this recommendation because the intent of the BMSLCA and the regulations is to place the cost of repairs squarely on the shoulders of the mine operator who caused the damage. Moreover, implementation of this recommendation would require significant changes to the Department's Mine Subsidence Insurance program, which are beyond the scope of this final-form rulemaking.

#### *Coverage of dwellings and related structures*

One commentator objected to amendments that delete the dates on which a permanently affixed appurtenant structure or improvement has to be in place in order to qualify for damage repair and compensation.

The Department acknowledges the commentators objection. However, amendments deleting these qualifications are necessary to comply with OSM requirements. Furthermore, the OSM has superseded the statutory provisions that were the basis for these qualifications.

One commentator objected to changes that would make mine operators liable for damages to permanently affixed appurtenant structures and improvements that were not "securely attached to the ground." The commentator asserted that mine operators should not be responsible for damage to aboveground swimming pools or any other "appurtenant structures" such as small outbuildings, sheds, gazeboes and similar "structures" that could be easily dismantled and removed by the landowner before mining and reinstalled afterwards.

The Department does not agree with the commentator's argument. The provisions of 30 CFR 817.121(c)(5) (relating to subsidence control) unequivocally require repair of or compensation for all "occupied residential dwellings and structures related thereto" in place at the time of mining. The Federal regulations do not require that a structure be attached to the land surface in order to qualify for repair or compensation provisions, nor do they waive liability for damage to structures that could have been dismantled or moved by the landowner. Moreover, in situations when damage can be prevented by moving or dismantling a structure, 30 CFR 817.121(a) places this obligation squarely on the operator. For the Commonwealth's regulatory program to be no less effective than the Federal regulatory program, it is necessary to remove the qualification that the structures and improvements in § 89.142a(f)(1)(iii) be securely attached to the land surface.

One commentator recommended adding a requirement that damaged septic systems must be replaced rather than repaired.

The Department sees no reason to require replacement in all cases. Section 89.142a(f)(1) requires that damaged septic systems be promptly and fully rehabilitated, restored or replaced. The determination of whether a system should be repaired or replaced depends on the level and extent of damage. Minor damage to pipes and tanks can often be repaired or corrected by replacing the damaged component rather than replacing the entire system.

*Statute of limitations on filing claims for structure damage and water supply loss*

One commentator objected to amending §§ 89.143(c) and 89.152 to delete the 2-year statute of limitations for filing claims of damage to EPACT structures and water supplies.

The Department acknowledges the commentator's position, however, these changes are required to comply with the Federal requirements in 30 CFR 938.16(iiii), (xxxx), (nnnn) and (yyyy). Furthermore, the OSM has superseded the statutory provisions in sections 5.1(b) and 5.5(b) of the BMSLCA, which serve as the basis for these statutes of limitations, to the extent these provisions would limit an operator's liability to repair or compensate for damage to an EPACT structure or to restore or replace an EPACT water supply.

One commentator asserted that since there are no statutes of limitations on water supply and structure claims under Federal law, there should be no statutes of limitations in State law.

The Department does not agree with the commentator's assertion. The OSM's supersession of sections 5.1(b) and 5.5(b) of the BMSLCA only nullifies statutes of limitations in regard to claims filed for EPACT structures and water supplies. The statutes of limitations in sections 5.1(b) and 5.5(b) of the BMSLCA remain in effect for non-EPACT structures and water supplies. These provisions cannot be disregarded in the final-form rulemaking.

*Denial of access and release of liability*

One commentator objected to amendments to § 89.144a which would remove the relief of liability that was previously available to operators who were denied access to perform premining or postmining surveys of EPACT structures. The commentator asserted that the amendments would remove the incentive for structure owners to grant operators access to perform surveys and damage

minimization measures. The commentator asserted that premining surveys are necessary to distinguish between damages caused by underground mining operations and damages caused by other factors and expressed concern that, in the absence of premining survey information, operators could be held liable for damages they did not cause. The commentator also asserted that the denial of access to perform damage minimization measures could expose an operator to liability for additional damages that could have been prevented. The commentator also expressed concern that a structure owner could stop full extraction mining beneath his property by denying an operator access to perform measures needed to prevent irreparable damage. As a final point, the commentator asserted that denial of access to perform a postmining survey deprives an operator of the right to engage in reasonable discovery concerning the nature of a damage claim.

The Department acknowledges the commentator's concerns. However, the amendments to § 89.144a are necessary to comply with Federal requirements in 30 CFR 938.16(vvvv) and (pppp). Furthermore, the OSM has superseded the statutory provision, which relieves an operator of liability if a landowner denies access for a premining or postmining survey, to the extent it applies to EPACT structures.

Contrary to the commentator's assertion, it is possible to distinguish subsidence damage from other types of damage and deterioration in the absence of recent premining survey information. The Department is often faced with the need to distinguish between subsidence damage and other types of damage or structural deterioration in its mine subsidence insurance program when baseline information may be nonexistent or many years old at the time of investigation. The Department has established procedures and criteria that it uses to identify damages caused by mine subsidence and to distinguish those damages from damages caused by other factors. The Department uses these same procedures and criteria in investigating claims filed under its subsidence regulatory program.

The Department agrees with the commentator's assertion that denial of access to perform a premining survey and damage minimization measures could result in more damage to a structure than would have otherwise occurred. In recognition of this possibility, a provision is added to § 89.144a to address situations when an operator has been denied access to perform measures necessary to minimize damage. This new provision in § 89.144a(c) provides that an operator is not responsible for that portion of structure damages, which the operator can show, by a preponderance of evidence, could have been prevented if the structure owner had provided access to conduct a premining survey and implement damage minimization measures.

The Department acknowledges the commentator's concern that some property owners could attempt to use denial of access as a means to block full extraction mining beneath a structure that is expected to incur irreparable damage. However, the Department does not regard the provisions of § 89.144a as granting structure owners the right to deny access for mitigation necessary to prevent irreparable damage. Furthermore, when the Department determines that the proposed mining will cause irreparable damage and the operator agrees to take approved measures to minimize the impacts resulting from subsidence but the structure owner denies access to implement the mitigation measures, the operator will have met the

legal requirements of section 9.1 of the BMSLCA (52 P. S. § 1406.9a) and the denial of access will not prevent the mining.

The commentator's assertion that the denial to conduct a postmining survey equates to denial of the right of a defendant to conduct reasonable discovery is incorrect. If an operator were denied access to perform either a premining or postmining survey, the Department or the property owner would still be required to assemble information needed to substantiate the extent of damage and prove that the operator's underground mining operations were the cause. This information would be discoverable in legal proceedings before the Environmental Hearing Board (EHB) or the courts, if the operator were to appeal the Department's order to repair or compensate for the alleged damage.

One commentator asserted that in no instance should an operator be relieved of liability when subsidence caused by mining is determined to be the cause of damage. The commentator also asserted that landowners who deny access should not be required to provide conclusive evidence that a company's underground mining operations were the cause of the damage.

The Department believes that the amendments to § 89.144a address the commentator's concerns. Final § 89.144a(b) provides that an operator is liable for damage to an EPACT structure if the Department or the landowner can show by a preponderance of evidence that the damage was caused by the operator's underground mining operations. The standard of evidence used in subsection (b) is less stringent than the "conclusive evidence" cited by the commentator.

One commentator recommended that landowners should be allowed to select home inspectors or contractors to perform premining and postmining surveys.

The Department notes that § 89.144a does not prevent landowners from hiring inspectors to perform premining and postmining surveys. However, landowners must allow mine operators equal access to perform premining or postmining surveys of their own. Landowners who deny access may forfeit certain rights to repair or compensation if damaged structures do not qualify as EPACT structures.

One commentator felt it was a conflict of interest to designate the mine operator as the party responsible for performing premining surveys.

The Department does not agree with the commentator's assertion. The primary obligation to perform premining surveys rests with the mine operator under both the Chapter 89 and the Federal regulations. Landowners are free to conduct their own surveys at their expense. The Department does not have the staff or resources to perform these surveys.

#### *Water supply survey requirements*

One commentator objected to the amendments in § 89.145a(a). The commentator questioned whether the Department has sufficient staff to take on this additional obligation. The commentator felt that a fixed 2,500-foot distance should be used to ensure that surveys are performed sufficiently in advance of mining.

The Department does not agree with the commentator's recommendation regarding the use of a fixed 2,500-foot distance for defining premining survey requirements. The OSM objects to using fixed separation distances for this purpose, which is why § 89.145a(a) is amended to incorporate a flexible standard.

In regard to the commentator's other concern, the Department does not regard this amendment as substantially increasing the workload on permit review staff. The determination of appropriate sampling distances is closely related to other determinations reviewers must make during the course of application review, such as the identification of water supplies which are susceptible to mining-related effects. Reviewers' determinations will be facilitated through the use of Department databases and permit files, which contain information on distances between mining and affected water supplies.

#### *Provision of temporary water*

One commentator asserted that there was no reason to distinguish between EPACT and non-EPACT water supplies in amending § 89.145a(e) to incorporate requirements relating to the prompt provision of temporary water. The commentator noted that the BMSLCA already provides comparable protection for all "domestic water supplies."

The Department does not agree with the commentator's assessment. There is a need to clarify that § 89.145a(e) applies to EPACT water supplies. The Federal requirement to promptly provide temporary water applies to a wider range of water supplies than the "domestic water supplies" acknowledged by the commentator. The Federal regulations also apply to water supplies that provide drinking water to industrial plants, commercial buildings, noncommercial buildings and recreational facilities. To be no less effective than the Federal regulations, § 89.145a(e) must require the prompt provision of temporary water in all situations when affected water supplies fall within the scope of the Federal water supply replacement requirements. It is therefore necessary to clarify that the provisions of § 89.145a(e) are applicable to all cases involving EPACT water supplies.

One commentator objected to the use of water buffaloes (temporary water storage tanks) as temporary water sources. The commentator questioned whether anyone tests the water stored in these tanks.

The Department notes that use of storage tanks and hauled water is a permissible means of providing temporary water under both State and Federal regulatory programs. In this Commonwealth, the bulk water haulers that provide temporary water service are subject to the requirements of Chapter 109 (relating to safe drinking water), which include the periodic testing of delivered water.

#### *Standards for quantity of replacement water supplies*

Two commentators recommended that § 89.145a(b) should be further revised to match the Federal standard in 30 CFR 701.5 (relating to definitions), which requires replacement water supplies to be equivalent in quantity and quality to premining water supplies. One of the commentators further asserted that if replacement standards are left unchanged, the landowner should be the one who determines the scope of existing and reasonably foreseeable uses.

The Department does not agree with the commentators' recommendations. The OSM has already determined that the Commonwealth's water supply replacement provisions, which rely on actual and reasonably foreseeable use as the standard, are no less effective than Federal standards for water supply replacement. See 66 FR 67011 (December 27, 2001). Since the BMSLCA establishes a use-based standard for determining the adequacy of replacement water supplies, it would be inappropriate to substitute alternative criteria.

In regard to the second recommendation, the existing regulations provide ample opportunity for landowners to provide input regarding the existing and reasonably foreseeable uses of water supplies. Section 89.145a(a) requires an operator to gather information on existing and reasonably foreseeable uses as part of the premining survey of a water supply. It also requires an operator to provide this information to the landowner within 30 days. At that point, the landowner can accept the operator's description or provide the Department with information that justifies consideration of additional uses.

*Cost of operating and maintaining a replacement water supply*

One commentator supported the amendments to § 89.145a(f)(5) that make operators liable for all increases in costs associated with the operation and maintenance of a restored or replacement water supply. However, the commentator did not support the change in paragraph (5)(i) that allows a mine operator and landowner to negotiate the time period for which compensation is to be provided. The commentator observed that even if this provision is based on 30 CFR 701.5, it represents a lower standard than the Commonwealth now has because the Department currently requires operators to pay increased costs in perpetuity. The commentator asserted that when State regulations are more effective than their Federal counterparts, the OSM cannot require that they be amended to match Federal requirements.

The Department agrees with the commentator's recommendation. Section 89.145a(f)(5) has been changed in the final-form rulemaking to clarify that the requirement to provide for the permanent payment of increased operating and maintenance costs applies to cases involving EPACT water supplies as well as cases involving other types of water supplies. Although the remaining portion of paragraph (5) tracks the language of the Federal regulation, the basic requirement to provide for the "permanent payment" of the increased cost is now clearly stated. This amendment also makes the provisions of § 89.145a(f)(5) consistent with Pennsylvania case law.

One commentator objected to the new provision in § 89.145a(f)(5)(i) which allows for agreements setting forth the terms of payment for increased operation and maintenance costs. The commentator believes that many so-called "agreements" between landowners and coal operators leave room for unfair, unchallenged settlements and that property owners are often at disadvantage in negotiating agreements with mine operators.

The Department acknowledges the commentator's concerns, but notes that voluntary agreements for the payment of increased operation and maintenance costs are permissible under both State and Federal regulations. The Department has always offered and will continue to offer assistance to property owners who are faced with signing an agreement.

One commentator indicated that it did not oppose the amendment to § 89.145a(f)(5) which would obligate our mine operators to pay all increased costs of operating and maintaining a restored or replaced domestic water supply.

The Department acknowledges the commentator's position, but notes that § 89.145a(f)(5) was changed between proposed and final rulemaking to apply to all water supplies not just EPACT water supplies.

One commentator recommended that the "de minimis" cost concept in § 89.145a(f)(5) should be deleted with respect to all water supplies covered by the BMSLCA. The commentator asserted that the EHB never intended

this concept to be defined or used as it is currently. The commentator noted that what is "de minimis" to some may not be "de minimis" to others.

Section 89.145(f)(5) in this final-form rulemaking has been amended to delete the "de minimis" cost concept in regard to both EPACT and non-EPACT water supplies. The Department agrees that operators should be liable for all increased costs attributable to the operation and maintenance of a restored or replacement water supply. The Department also wishes to avoid creating two separate regulatory standards for the cost of replacement water supplies which are based on the same statutory provision. In view of this change, the term "de minimis cost increase" and its definition are deleted from § 89.5, since the term is not used elsewhere in Chapter 89.

*Compensation for loss of water supply*

One commentator advocated the use of improved prediction techniques and more careful permitting so that cases when water supplies cannot be replaced become rare or nonexistent.

The Department acknowledges the commentator's recommendation and notes that it continually strives to improve its predictive capabilities and to ensure that replacement options are available for all water supplies that are likely to be impacted.

One commentator asserted that the conditions under which an operator is allowed to provide compensation rather than restore or replace an affected water supply should be the same for all water supplies covered by the BMSLCA and not be restricted to EPACT water supplies.

The Department does not agree with the commentator's assertion. It is necessary to distinguish between the conditions under which compensation may be used to satisfy EPACT water supply claims and the conditions under which compensation may be used to satisfy non-EPACT water supply claims. The OSM has only superseded section 5.2(g) and (h) of the BMSLCA to the extent that this section is inconsistent with the Federal SMCR. This being the case, the OSM's action only limits the use of compensation with respect to settlements involving EPACT water supplies. The compensation options and restrictions on Department actions remain applicable to settlements involving water supplies that are outside the scope of the Federal program. It is therefore necessary to reflect this distinction in § 89.152.

One commentator asserted that the proposed amendment to § 89.152(b), which allows a property owner to waive the provision of a restored or replacement water supply, makes the Commonwealth's regulations more liberal insofar as water replacement goes, instead of more restrictive as the OSM said they should be. The commentator recommended amending § 89.152(b) to require that a portion of the compensation paid under a waiver agreement be held in escrow to guarantee water replacement in case the property owner or a successor property owner desires such replacement in the future. The commentator believed that if waiver agreements are determined to be unconstitutional, coal companies may be deemed liable for water supply replacement irrespective of the provisions of these waiver agreements.

The Department does not agree with the commentator's recommendations. The provision in § 89.152(b) is based on Federal regulatory requirements relating to the replacement of affected water supplies. (See the definition of "replacement of water supply" in 30 CFR 701.5.) The OSM has found this provision to be no less effective than those requirements. Moreover, this provision is clearly



within the scope of section 5.3(a) of the BMSLCA (52 P. S. § 1406.5c(a)), which provides that “[n]othing contained in this act shall prohibit the mine operator and landowner at any time after the effective date of this section from voluntarily entering into an agreement establishing the manner and means by which an affected water supply is to be restored or an alternate supply is to be provided or providing fair compensation for such contamination, diminution or interruption.”

The Department also notes that the commentator’s recommendation concerning the use of escrow to ensure the future development of a replacement water supply is not authorized by the BMSLCA. It is also beyond the scope of the OSM’s requirements.

One commentator recommended that requirements provide for replacement of all affected water supplies.

The Department believes that the amendments to § 89.152(a) adequately ensure the restoration or replacement of EPACT water supplies that are affected by underground mining operations. Section 89.152(b), which addresses non-EPACT water supplies, also promotes the restoration or replacement of affected water supplies but includes provisions that allow claims to be settled through compensation when operators decide restoration or replacement is not practical. These two distinct standards are necessary because the OSM’s final rule only results in a partial supersession of section 5.2(g) and (h) of the BMSLCA, leaving intact provisions that allow claims for non-EPACT water supplies to be settled through compensation.

The Department also notes that the water supply replacement requirements in § 89.145a and the special water supply replacement provisions in § 89.152 only apply to springs with documented water supply uses. Springs that are not used for domestic, commercial industrial, recreational or agricultural purposes do not meet the definition of “water supply” in § 89.5.

One commentator asserted that mine operators should be held more accountable for the damage they cause. The commentator expressed particular concern about farms that rely on springs and ponds for agricultural uses.

The Department acknowledges the commentator’s concerns and notes that the law requires restoration or replacement of affected agricultural water supplies. It is rare that a water supply cannot be repaired or replaced. The Department does not allow mining that would diminish a water supply, if it determines that restoration or replacement is unlikely to be successful. The Commonwealth’s existing law and regulations include provisions designed to protect property values in cases when agricultural water supplies cannot be restored or replaced. In cases when water supplies cannot be restored or replaced, a property owner may insist that the mine operator purchase the property at its fair market value immediately prior to the time of water loss or provide compensation equal to the reduction in fair market value resulting from the water loss. These options are not in any way diminished by this rulemaking.

#### *Availability of replacement water supply*

One commentator asserted that the Department should deny permit applications that fail to demonstrate that mining operations will not pollute, disrupt or destroy the waters of this Commonwealth. The commentator cited a recent situation when the Department granted funds to pay for the expansion of a public water system necessitated by the destruction of private water supplies by an underground mining operation. The commentator felt that

the economic feasibility of replacing water resources should not be a concern of citizens or the Department and that if replacement is not feasible, mining should not take place.

The Department believes that this final-form rulemaking, in combination with the Federal supersession of sections 5.2(g) and (h) of the BMSLCA, will serve to tighten requirements relating to the restoration and replacement of EPACT water supplies. Under the amended law and regulations, operators must restore or replace affected EPACT water supplies except in situations when the Department determines that a permanent replacement source meeting regulatory standards for adequacy cannot be developed. Cost alone cannot be the basis for this determination. Under the new requirements, an operator could be faced with water supply replacement expenses amounting to several times the value of the affected property. The elimination of the option to compensate rather than restore or replace affected EPACT water supplies should, in itself, cause operators to consider more carefully which supplies their operations are likely to affect and how those supplies will be restored or replaced.

The Department further notes that the partial supersession of section 5.2(h) of the BMSLCA removes restrictions that previously limited its authority to order the replacement of affected EPACT water supplies. This authority, in combination with the Department’s current application preview procedures, should provide greater assurance of water supply replacement. As part of an application review, the Department ensures that suitable plans are in place for the restoration or replacement of all water supplies that are likely to be affected by proposed operations.

One commentator asserted that the feasibility of providing municipal water service to affected properties should be proven before any mining permit is issued.

The Department agrees and notes that provisions are currently in place to address the commentator’s concern. Section 89.36(c) (relating to protection of the hydrologic balance) requires operators to describe how they will replace water supplies affected by their underground mining operations. The Department now requires permit applications to include information showing that all water supplies that are likely to be affected by underground mining operations can be restored or replaced. In addition, the amendments to § 89.152 adopted in this final-form rulemaking provide greater assurance that affected EPACT water supplies will be restored or replaced.

#### *Department assistance to landowners*

One commentator recommended that the Department should be responsible to handle damage claims for affected property owners to promptly restore their property, water and lives back to normal. The commentator felt that property owners should not be expected to negotiate their own settlements with the mining company unless they so choose.

The Department acknowledges the commentator’s recommendation, but notes that the claim resolution provisions of the BMSLCA are predicated, for the most part, on interactions between the mine operator and affected property owner. The Department’s role is to intervene at the property owner’s request or upon recognition of a potentially hazardous situation. The Department is always willing to provide assistance when requested to do so.

One commentator noted that, contrary to statements in the preamble to the proposed rulemaking, the Department does not have surface subsidence agents available to assist property owners in areas when room-and-pillar mining takes place. The commentator noted that resolving problems is a huge problem for landowners in these areas.

The Department acknowledges that it has not assigned surface subsidence agents to service property owners in room-and-pillar mining areas. These agents are assigned to longwall mining areas, which tend to experience a higher number of subsidence damage claims and water supply impacts. The Department does, however, provide property owners in all underground mining areas with fact sheets explaining the remedies to which they are entitled. The fact sheets include an 800 number through which affected property owners can contact the Department and request assistance at any time.

#### *OSM requirements and proposed rules*

Several commentators submitted comments that were directed primarily at the OSM's proposed rulemakings and the Federal requirements in 30 CFR 938.16. Some commentators presented arguments against the OSM's proposal to supersede inconsistent provisions of the BMSLCA and some commentators argued that the OSM should supersede additional provisions of the BMSLCA. Some commentators also argued that the OSM should lift certain requirements in 30 CFR 938.16, while others argued that the Commonwealth's proposed rulemaking did not satisfy those requirements. The OSM considered these comments in formulating its final rulemakings at 69 FR 71528 and 71551, but made no changes in response to these arguments. Similarly the OSM did not lift any of its requirements in 30 CFR 938.16 in response to these arguments.

#### *Issues beyond the scope of this rulemaking*

A large group of comments concerned matters that were beyond the scope of this final-form rulemaking. Many commentators, representing primarily citizens interests, argued for changes in law and regulation that would provide greater protection of farms, homes, water supplies, streams and water resource in general. One commentator recommended increasing taxes on coal reserves.

Another group of comments came from private citizens who wished to report their experiences with incidents of subsidence damage and water loss or who wished to express their apprehension about the prospect of having their properties undermined. Some of these comments dealt with water supply problems that occurred prior to the effective date of the BMSLCA's water supply replacement provisions.

#### *IRRC comments*

IRRC recommended that the final-form rulemaking not be approved before the OSM finalized its action superseding the inconsistent provisions of the BMSLCA. As noted previously, the OSM rule superseding the inconsistent provisions of the BMSLCA became final on December 9, 2004. The Commission's condition is therefore deemed to be satisfied.

#### *F. Benefits, Costs and Compliance*

##### *Benefits*

The final-form rulemaking will benefit the Commonwealth, the underground coal mining industry and coal field residents by simplifying program requirements. Currently, a dual enforcement program exists in this Com-

monwealth under which the Department enforces the provisions of the BMSLCA and Chapter 89 and the OSM enforces the provisions of the Federal regulations in cases when the Federal regulations provide more effective remedies than the BMSLCA and Chapter 89. The dual enforcement arrangement has, at times, created confusion regarding the obligations of mine operators, the remedies available to affected landowners and agency jurisdiction. The final-form rulemaking will eliminate the need for dual enforcement and consolidate all requirements relating to subsidence damage repair and compensation and the replacement of water supplies affected by underground coal mining operations in Chapter 89.

The final-form rulemaking will also enable the Commonwealth to fulfill its primacy obligations and retain primary enforcement responsibility over underground coal mining operations.

##### *Compliance Costs*

The final-form rulemaking slightly increases the costs of preparing permit applications and subsidence control plans. These additional costs will affect 28 companies that operate underground bituminous coal mines in this Commonwealth. No additional cost will be imposed on government entities or the public. The final-form rulemaking simplifies mine operators' obligations in regard to the repair of subsidence damage and replacement of affected water supplies.

##### *Compliance Assistance Plan*

The Department will provide written notification to all underground coal mine operators to inform them of the final promulgation of this rulemaking. The Department will also hold roundtable meetings with mine operators and consultants to explain program changes and answer questions.

The Department will also conduct outreach to landowners in active mining areas to assist them in understanding their rights and obligations under the amended law and regulations. The Department will update its fact sheets explaining the remedies provided by the amended law and regulations and the procedures for obtaining those remedies and will distribute the revised fact sheets to landowners in active mining areas. The Department will continue to deploy surface subsidence agents to meet with affected landowners and assist them in obtaining the remedies provided by the amended law and regulations.

##### *Paperwork Requirements*

The final-form rulemaking requires the Department to update its fact sheets explaining the remedies provided by the amended law and regulations and the procedures for obtaining those remedies.

#### *G. Pollution Prevention*

The matters affected by this final-form rulemaking do not pertain to pollution prevention or control.

#### *H. Sunset Review*

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

#### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 3, 2003, the Department submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 4554, to IRRC and the Chairper-

sons of the Senate and House Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 24, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. IRRC met on August 25, 2005, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

#### J. Findings

The Board finds that:

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

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

(3) The regulations do not enlarge the purpose of the proposed rulemaking published at 33 Pa.B. 4454.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble.

#### K. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapters 86 and 89, are amended by amending §§ 86.1, 86.151, 86.152, 89.5, 89.141, 89.142a, 89.143a, 89.144a, 89.145a, 89.146a and 89.152 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

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

(e) This order shall take effect immediately.

KATHLEEN A. MCGINTY,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 5068 (September 10, 2005).)*

**Fiscal Note:** Fiscal Note 7-385 remains valid for the final adoption of the subject regulations.

## Annex A

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

#### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE I. LAND RESOURCES

#### CHAPTER 86. SURFACE AND UNDERGROUND COAL MINING: GENERAL

#### Subchapter A. GENERAL PROVISIONS

#### § 86.1. Definitions.

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

\* \* \* \* \*

*Underground mining activities*—Includes the following:

(i) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities, including hoist and ventilating ducts, area used for the disposal and storage of waste and areas on which materials incident to underground mining operations are placed.

(ii) Underground operations such as underground construction, operation and reclamation of shafts, adits, support facilities located underground, in situ processing and underground mining, hauling, storage and blasting.

(iii) Operation of a mine, including preparatory work in connection with the opening and reopening of a mine, backfilling, sealing and other closing procedures, postclosure mine pool maintenance and any other work done on land or water in connection with a mine.

\* \* \* \* \*

#### Subchapter F. BONDING AND INSURANCE REQUIREMENTS

#### AMOUNT AND DURATION OF LIABILITY

#### § 86.151. Period of liability.

(a) Liability under bonds posted for a coal surface mining activity shall continue for the duration of the mining activities and its reclamation as provided in the acts, regulations adopted thereunder and the conditions of the permit and for 5 additional years after completion of augmented seeding, fertilization, irrigation or other work necessary to achieve permanent revegetation of the permit area.

(b) Liability under bonds posted for the surface effects of an underground mine, coal preparation activity or other long-term facility shall continue for the duration of the mining operation or use of the facility, its reclamation as provided in the acts, regulations adopted thereunder and the conditions of the permit, and for 5 years thereafter, except for:

(1) The risk of water pollution for which liability under the bond shall continue for a period of time after completion of the mining and reclamation operation. This period of time will be determined by the Department on a case-by-case basis.

(2) The risk of subsidence from bituminous underground mines for which liability under the bond shall continue for 10 years after completion of underground mining operations.

(c) Liability under bonds posted for coal refuse disposal activities shall continue for the duration of the activities and for 5 years after the last year of augmented seeding and fertilizing and other work to complete reclamation to meet the requirements of the acts, regulations adopted thereunder, the conditions of the permit and to otherwise protect the environment. Liability under the bond related to the risk of water pollution from activities shall continue for a period of time after completion of the coal refuse disposal activities. This period of time will be determined by the Department on a case-by-case basis.

(d) The extended period of liability which begins upon completion of augmenting seeding, fertilization, irrigation or other work necessary to achieve permanent revegetation of the permit area shall include additional time taken by the permittee to repeat augmented seeding, fertilization, irrigation or other work under a requirement by the Department but may not include selective husbandry practices approved by the Department, such as pest and vermin control, pruning, repair of rills and gullies or reseeding or transplanting, or both, which constitute normal conservation practices within the region for other land with similar land uses. Augmented seeding, fertilization, irrigation and repair of rills and gullies performed at levels or degrees of management which exceed those normally applied in maintaining use or productivity of comparable unmined land in the surrounding area, would necessitate extending the period of liability.

(e) A portion of a permit area requiring extended liability may be separated from the original area and bonded separately upon approval by the Department. Before determining that extended liability should apply to only a portion of the original permit area, the Department will determine that the area portion is:

(1) Not significant in extent in relation to the entire area under bond.

(2) Limited to a distinguishable contiguous portion of the permit area.

(f) If the Department approves a long-term intensive agricultural postmining land use, in accordance with § 87.159, § 88.133, § 88.221, § 88.334, § 88.381, § 88.492, § 89.88 or § 90.165, the 5-year period of extended liability shall commence at the date of initial planting for the long-term intensive agricultural land use.

(g) If the Department issues a written finding approving a long-term intensive agricultural land use, the operation shall be exempt from the requirements of § 87.147(b), § 88.121(b), § 88.209(b), § 88.322(b), § 88.492, § 89.86 or § 90.150(b). A finding does not constitute a grant of an exception to the bond liability periods of this section.

(h) The bond liability of the permittee shall include only those actions which the operator is obliged to take under the permit, including completion of the reclamation plan so that the land will be capable of supporting a postmining land use approved under § 87.159, § 88.133, § 88.221, § 88.334, § 88.381, § 88.492, § 89.88 or § 90.166. Implementation of an alternate postmining land use approved under these sections which is beyond the control of the permittee need not be covered by the bond.

(i) If an area is separated under subsection (e), that portion shall be bonded separately, and the applicable period of liability, in accordance with this section, shall begin again. The amount of bond on the original bonded area may be adjusted in accordance with § 86.152 (relating to adjustments).

(j) Release of any bond under this section does not alleviate the operator's responsibility to treat discharges of mine drainage emanating from or hydrologically connected to the site, to the standards in the permit, the act, The Clean Streams Law, the Federal Water Pollution Control Act and the rules and regulations thereunder.

**§ 86.152. Bond adjustments.**

(a) The amount of bond required and the terms of the acceptance of the applicant's bond will be adjusted by the Department from time to time as the area requiring bond coverage is increased or decreased, or when the cost of future reclamation changes, or when the projected subsidence damage repair liability changes. The Department may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement. This requirement shall only be binding upon the permittee and does not compel a third party, including surety companies, to provide additional bond coverage and does not extend the coverage of a subsidence bond beyond the requirements imposed by sections 5, 5.4, 5.5 and 5.6 of the Bituminous Mine Subsidence and Land Conservation Act.

(b) A permittee may request reduction of the required bond amount upon submission of evidence to the Department that warrants a reduction of the bond amount by proving that the permittee's method of operation or other circumstances will reduce the maximum estimated cost to the Department to complete the reclamation, restoration or abatement responsibilities.

(c) Bond adjustments which involve unaffected portions of a permit area upon which no reclamation liability has been incurred or permits that have not been activated and upon which no reclamation liability has been incurred, and bond adjustments which are based on revisions of the cost estimates of reclamation, are not subject to the procedures of §§ 86.170—86.172 (relating to scope; procedures for seeking release of bond; and criteria for release of bond), except as provided in § 86.172(b) and (c).

(d) The Department will notify the permittee, the surety and any person with a property interest in collateral who has requested the notification, of any proposed adjustment to the bond amount. The Department will also provide the permittee an opportunity for an informal conference on the adjustment.

**CHAPTER 89. UNDERGROUND MINING OF COAL AND COAL PREPARATION FACILITIES**

**Subchapter A. EROSION AND SEDIMENTATION CONTROL**

**GENERAL PROVISIONS**

**§ 89.5. Definitions.**

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

\* \* \* \* \*

*Cropland*—Land used for the production of adapted crops for harvest, along or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops and other similar specialty crops.

*Disturbed area*—An area where vegetation, topsoil or overburden is removed or upon which topsoil, spoil, coal processing wastes, underground development wastes or noncoal waste is placed by coal mining operations.

\* \* \* \* \*

*Dwelling*—A building or other structure that, at the time subsidence occurs, is used either temporarily, occasionally, seasonally or permanently for human habitation.

*EPACT structures*—

(i) Structures that are subject to repair and compensation requirements under section 720(a) of the Surface Mining Control and Reclamation Act (30 U.S.C.A. § 1309a).

(ii) The term includes:

- (A) Noncommercial buildings.
- (B) Dwellings.
- (C) Structures adjunct to or used in conjunction with dwellings, including, but not limited to:
  - (I) Garages.
  - (II) Storage sheds and barns.
  - (III) Greenhouses and related buildings.
  - (IV) Customer-owned utilities and cables.
  - (V) Fences and other enclosures.
  - (VI) Retaining walls.
  - (VII) Paved or improved patios.
  - (VIII) Walks and driveways.
  - (IX) Septic sewage treatment facilities.
  - (X) Inground swimming pools.
  - (XI) lot drainage and lawn and garden irrigation systems.

*EPACT water supplies*—

(i) Water supplies that are subject to replacement under section 720(a) of the Surface Mining Control and Reclamation Act, including drinking, domestic or residential water supplies in existence prior to the date of permit application.

(ii) The term includes water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use.

(iii) The term does not include wells and springs that serve only agricultural, commercial or industrial enterprises except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

*Embankment*—An artificial deposit of material that is raised above the natural surface of the land and used to contain, divert or store water, support roads or railways, or for other similar purposes.

\* \* \* \* \*

*Permanent diversion*—A diversion which is to remain after underground mining activities are completed and which has been approved for retention by the Department.

*Permit area*—The mine and surface areas where underground mining activities occur.

\* \* \* \* \*

*Underground mining activities*—Includes the following:

(i) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities, including hoist and ventilating ducts, areas used for the disposal and storage of waste and areas on which materials incident to underground mining operations are placed.

(ii) Underground operations such as underground construction, operation and reclamation of shafts, adits, support facilities located underground, in situ processing and underground mining, hauling, storage and blasting.

(iii) Operation of a mine including preparatory work in connection with the opening and reopening of a mine, backfilling, sealing, and other closing procedures, postclosure mine pool maintenance and any other work done on land or water in connection with a mine.

*Underground mining operations*—Underground construction, operation and reclamation of shafts, adits, support facilities located underground, in situ processing and underground mining, hauling, storage and blasting.

\* \* \* \* \*

**Subchapter F. SUBSIDENCE CONTROL AND WATER SUPPLY REPLACEMENT**

**§ 89.141. Subsidence control: application requirements.**

\* \* \* \* \*

(d) *Subsidence control plan*. The permit application must include a subsidence control plan which describes the measures to be taken to control subsidence effects from the proposed underground mining operations. The plan must address the area in which structures, facilities or features may be materially damaged by mine subsidence. At a minimum, the plan must address all areas within a 30° angle of draw of underground mining operations which will occur during the 5-year term of the permit. The subsidence control plan must include the following information:

(1) A description of the method of coal removal, such as longwall mining, room and pillar mining, hydraulic mining or other extraction methods, including the size, sequence and timing for the development of underground workings.

(2) A narrative describing whether subsidence, if it is likely to occur, could cause material damage to or diminish the value or reasonably foreseeable use of any structures or could contaminate, diminish or interrupt water supplies.

(3) For each structure and feature, or class of structures and features, described in § 89.142a(c) (relating to subsidence control: performance standards), a detailed description of the measures to be taken to ensure that subsidence will not cause material damage to, or reduce the reasonably foreseeable uses of the structures or features.

(4) A description of the anticipated effects of planned subsidence, if any.

(5) A description of the measures to be taken to correct any subsidence-related material damage to the surface land.

(6) A description of the measures to be taken to prevent irreparable damage to the structures enumerated in § 89.142a(f)(1)(iii)—(v), if the structure owner does not consent to the damage.

(7) A description of the monitoring, if any, the operator will perform to determine the occurrence and extent of subsidence so that, when appropriate, other measures can be taken to prevent or reduce or correct damage in accordance with § 89.142a(e) and (f).

(8) A description of the measures to be taken to maximize mine stability and maintain the value and reasonably foreseeable use of the surface land.

(9) For EPACT structures other than noncommercial buildings protected under § 89.142a(c), a description of the methods to be employed in areas of planned subsidence to minimize damage or otherwise comply with § 89.142a(d)(1)(i).

(10) For EPACT structures other than noncommercial buildings protected under § 89.142a(c), a description of the subsidence control measures to be taken under § 89.142a(d)(1)(ii) to prevent subsidence and subsidence-related damage in areas where underground mining operations are not projected to result in planned subsidence.

(11) A description of the measures which will be taken to maintain the value and foreseeable uses of perennial streams which may be impacted by underground mining operations. The description shall include a discussion of the effectiveness of the proposed measures as related to prior underground mining operations under similar conditions.

(12) A description of the measures to be taken to prevent material damage to perennial streams and aquifers which serve as a significant source to a public water supply system.

(13) A description of utilities including type, nature of use, composition and approximate age of pipelines, and a description of the measures to be taken to minimize damage, destruction or disruption in utility service in accordance with § 89.142a(g).

(14) A description of applicable measures to be taken to control subsidence under other statutes, including:

(i) The act of December 22, 1959 (P. L. 1994, No. 729) (52 P. S. §§ 3101—3109).

(ii) The Oil and Gas Act (58 P. S. §§ 601.101—601.605).

(iii) Section 419 of the State Highway Law (36 P. S. § 670-419).

(iv) Section 1 of the act of June 1, 1933 (P. L. 1409, No. 296) (52 P. S. § 1501).

(15) Other information requested in accordance with the policies and procedures of the Department.

**§ 89.142a. Subsidence control: performance standards.**

(a) *General requirements.* Underground mining operations shall be planned and conducted in accordance with the following:

\* \* \* \* \*

(b) *Structure surveys.*

\* \* \* \* \*

(2) The operator will be relieved of the duty to conduct a premining survey if the operator submits evidence to the Department that:

(i) The operator notified the owner by certified mail or personal service of the landowner's rights as set forth in sections 5.4—5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5d—1406.5f).

(ii) The operator attempted to conduct a survey.

(iii) The landowner failed to provide the operator with access to the site to conduct a survey within 10 days of receipt of the operator's notice of intent to conduct the survey.

(3) A landowner, who is notified of an operator's intent to conduct a premining or postmining survey in accordance with the notification procedures described in paragraph (2), should provide the operator access to the site for the purpose of conducting the survey within the time frame specified in paragraph (2) so the operator can do the following:

(i) Document the premining condition of the structure, assess the potential for material damage and plan appropriate damage minimization measures.

(ii) Determine the extent of subsidence damage and the scope of necessary repairs.

(c) *Restrictions on underground mining.*

(1) Unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of the structures and features listed in subparagraphs (i)—(v), no underground mining may be conducted beneath or adjacent to:

(i) Public buildings and facilities.

(ii) Churches, schools and hospitals.

(iii) Impoundments with a storage capacity of 20 acre-feet (2.47 hectare-meters) or more.

(iv) Bodies of water with a volume of 20 acre-feet (2.47 hectare-meters) or more.

(v) Bodies of water or aquifers which serve as significant sources to public water supply systems.

\* \* \* \* \*

(3) If the measures implemented by the operator cause material damage or reduce the reasonably foreseeable use of the structures or features listed in paragraph (1), the Department may suspend mining under or adjacent to these structures or features until the subsidence control plan is modified to ensure prevention of further material damage to these facilities or features.

(d) *Protection of certain EPACT structures and agricultural structures.*

(1) For EPACT structures other than noncommercial buildings protected under subsection (c):

(i) If an operator employs mining technology that provides for planned subsidence in a predictable and controlled manner, the operator shall take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to the structure, except when one of the following applies:

(A) The structure owner has consented, in writing, to allow material damage.

(B) The costs of these measures would exceed the anticipated cost of repairs and the anticipated damage will not constitute a threat to health or safety.

(ii) If an operator employs mining technology that does not result in planned subsidence in a predictable and controlled manner, the operator shall adopt measures consistent with known technology to prevent subsidence and subsidence-related damage to the extent technologically and economically feasible to the structure. Measures may include, but are not limited to:

- (A) Backstowing or backfilling of voids.
- (B) Leaving support pillars of coal.
- (C) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place.

(D) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(E) Other measures approved by the Department.

(2) If the Department determines and so notifies a mine operator that a proposed mining technique or extraction ratio will result in irreparable damage to a structure enumerated in subsection (f)(1)(iii)—(v), the operator may not use the technique or extraction ratio unless the building owner, prior to mining, consents to the mining or the operator, prior to mining, takes measures approved by the Department to minimize or reduce impacts resulting from subsidence to these structures.

(3) Nothing in paragraph (1) or (2) prohibits planned subsidence in a predictable and controlled manner or the standard method of room and pillar mining.

(e) *Repair of damage to surface lands.* To the extent technologically and economically feasible, the operator shall correct material damage to surface lands resulting from subsidence caused by the operator's underground mining operations.

(f) *Repair of damage to structures.*

(1) *Repair or compensation for damage to certain structures.* Whenever underground mining operations conducted on or after August 21, 1994, cause damage to any of the structures listed in subparagraphs (i)—(v), the operator responsible for extracting the coal shall promptly and fully rehabilitate, restore, replace or compensate the owner for material damage to the structures resulting from the subsidence unless the operator demonstrates to the Department's satisfaction that one of the provisions of § 89.144a (relating to subsidence control: relief from responsibility) relieves the operator of responsibility.

(i) Buildings that are accessible to the public including, but not limited to, commercial, industrial and recreational buildings and all structures that are securely attached to the land surface and adjunct to or used in conjunction with these buildings, including:

- (A) Garages.
- (B) Storage sheds and barns.
- (C) Greenhouses and related buildings.
- (D) Customer-owned utilities and cables.
- (E) Fences and other enclosures.
- (F) Retaining walls.
- (G) Paved or improved patios.
- (H) Walks and driveways.
- (I) Septic sewage treatment facilities.
- (J) Inground swimming pools.
- (K) Lot drainage and lawn and garden irrigation systems.

(ii) Noncommercial buildings customarily used by the public, including, but not limited to, schools, churches and hospitals.

(iii) Dwellings which are used for human habitation and permanently affixed appurtenant structures or im-

provements. In the context of this paragraph, the phrase "permanently affixed appurtenant structures or improvements" includes, but is not limited to, structures adjunct to or used in conjunction with dwellings, such as:

- (A) Garages.
- (B) Storage sheds and barns.
- (C) Greenhouses and related buildings.
- (D) Customer-owned utilities and cables.
- (E) Fences and other enclosures.
- (F) Retaining walls.
- (G) Paved or improved patios.
- (H) Walks and driveways.
- (I) Septic sewage treatment facilities.
- (J) Inground swimming pools.
- (K) Lot drainage and lawn and garden irrigation systems.

(iv) Barns and silos.

(v) Permanently affixed structures of 500 or more square feet (46.45 square meters) in area that are used for raising livestock, poultry or agricultural products, for storage of animal waste or for the processing or retail marketing of agricultural products produced on the farm on which the structures are located.

(2) *Amount of compensation.*

(i) If, rather than repair the damage, the operator compensates the structure owner for damage caused by the operator's underground mining operations, the operator shall provide compensation equal to the reasonable cost of repairing the structure or, if the structure is determined to be irreparably damaged, the compensation shall be equal to the reasonable cost of its replacement except for an irreparably damaged agricultural structure identified in paragraph (1)(iv) or (v) which at the time of damage was being used for a different purpose than the purpose for which the structure was originally constructed. For such an irreparably damaged agricultural structure, the operator may provide for the reasonable cost to replace the damaged structure with a structure satisfying the functions and purposes served by the damaged structure before the damage occurred if the operator can affirmatively prove that the structure was being used for a different purpose than the purpose for which the structure was originally constructed.

(ii) The operator shall compensate the occupants with an additional payment for reasonable, actual expenses incurred during their temporary relocation, if the occupants of a damaged structure are required to relocate. The operator shall also compensate the occupants for other actual, reasonable incidental costs agreed to by the parties or approved by the Department.

(g) *Protection of utilities.*

(1) Underground mining operations shall be planned and conducted in a manner which minimizes damage, destruction or disruption in services provided by oil, gas and water wells; oil, gas and coal slurry pipelines; rail lines; electric and telephone lines; and water and sewerage lines which pass under, over, or through the permit area, unless otherwise approved by the owner of the facilities and the Department.

\* \* \* \* \*

(h) *Perennial streams.*

(1) Underground mining operations shall be planned and conducted in a manner which maintains the value

and reasonably foreseeable uses of perennial streams, such as aquatic life; water supply; and recreation, as they existed prior to coal extraction beneath streams.

(2) If the Department finds that the underground mining operations have adversely affected a perennial stream, the operator shall mitigate the adverse effects to the extent technologically and economically feasible, and, if necessary, file revised plans or other data to demonstrate that future underground mining operations will meet the requirements of paragraph (1).

(i) *Prevention of hazards to human safety.*

(1) The Department will suspend underground mining operations beneath urbanized areas; cities; towns; and communities and adjacent to or beneath industrial or commercial buildings; lined solid and hazardous waste disposal areas; major impoundments of 20 acre-feet (2.47 hectare-meters) or more; or perennial streams, if the operations present an imminent danger to the public.

\* \* \* \* \*

**§ 89.143a. Subsidence control: procedure for resolution of subsidence damage claims.**

(a) The owner of a structure enumerated in § 89.142a(f)(1) (relating to subsidence control: performance standards) who believes that underground mining operations caused mine subsidence resulting in damage to the structure and who wishes to secure repair of the structure or compensation for the damage shall provide the operator responsible for the underground mining operations with notification of the damage to the structure.

(b) If the operator agrees that mine subsidence damaged the structure, the operator shall fully repair the damage or compensate the owner for the damage in accordance with either § 89.142a(f) or a voluntary agreement between the parties authorized by section 5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.5f).

(c) If the parties are unable to agree as to the cause of the damage or the reasonable cost of repair or compensation for the structure, the owner of the structure may file a claim in writing with the Department. The owner of a structure that is not an EPACT structure shall file the claim within 2 years of the date the structure was damaged.

(d) Upon receipt of the claim, the Department will send a copy of the claim to the operator and conduct an investigation in accordance with the following procedure:

(1) Within 30 days of receipt of the claim, the Department will conduct an investigation to determine whether underground mining operations caused the subsidence damage to the structure and provide the results of its investigation to the property owner and mine operator within 10 days of completing the investigation.

(2) Within 60 days of completion of the investigation, the Department will determine, and set forth in writing, whether the damage is attributable to subsidence caused by the operator's underground mining operations and, if so, the reasonable cost of repairing or replacing the damaged structure.

(3) If the Department finds that the operator's underground mining operations caused the damage to the structure, the Department will either issue a written order directing the operator to promptly compensate the structure owner or issue an order directing the operator to promptly repair the damaged structure. The Depart-

ment may extend the time for compliance with the order if the Department finds that further damage may occur to the same structure as a result of additional subsidence.

**§ 89.144a. Subsidence control: relief from responsibility.**

(a) Except as provided in subsection (b), the operator will not be required to repair a structure or compensate a structure owner for damage to structures identified in § 89.142a(f)(1) (relating to subsidence control: performance standards) if the operator demonstrates to the Department's satisfaction one or more of the following apply:

(1) The landowner denied the operator access to the property upon which the structure is located to conduct a premining survey or a postmining survey of the structure and surrounding property, and thereafter the operator served notice upon the landowner by certified mail or personal service. The operator shall demonstrate the following:

(i) The notice identified the rights established by sections 5.4—5.6 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5d—1406.5f).

(ii) The landowner denied the operator access to the site to conduct the survey within 10 days after the landowner's receipt of the notice.

(2) The operator's underground mining did not cause the damage.

(3) The operator and the landowner entered into a voluntary agreement that satisfies the requirements of section 5.6 of The Bituminous Mine Subsidence and Land Conservation Act.

(b) The relief in subsection (a)(1) will not apply in the case of an EPACT structure if the landowner or the Department can show, by a preponderance of evidence, that the damage resulted from the operator's underground mining operations.

(c) The operator is not responsible for the portion of structure damages which the operator can show, by a preponderance of evidence, could have been prevented had the structure owner provided the operator access to conduct a premining survey under § 89.142a (relating to subsidence control: performance standards) and implement necessary and prudent damage minimization measures.

**§ 89.145a. Water supply replacement: performance standards.**

(a) *Water supply surveys.*

(1) The operator shall conduct a premining survey and may conduct a postmining survey of the quantity and quality of all water supplies within the permit and adjacent areas, except when the landowner denies the operator access to the site to conduct a survey and the operator has complied with the notice procedure in this section. Premining surveys shall be conducted prior to the time a water supply is susceptible to mining-related effects. Survey information must include the following information to the extent that it can be collected without excessive inconvenience to the landowner:

(i) The location and type of water supply.

(ii) The existing and reasonably foreseeable uses of the water supply.

(iii) The chemical and physical characteristics of the water, including, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, hardness, total coliform, acidity, alkalin-



ity and sulfates. An operator who obtains water samples in a premining or postmining survey shall utilize a certified laboratory to analyze the samples.

(iv) The quantity of the water.

(v) The physical description of the water supply, including the depth and diameter of the well, length of casing and description of the treatment and distribution systems.

(vi) Hydrogeologic data such as the static water level and yield determination.

(2) The operator shall submit copies of the results of the analyses, as well as the results of any quantitative analysis, to the Department and to the landowner within 30 days of their receipt by the operator.

(3) If the operator cannot make a premining or postmining survey because the owner will not allow access to the site, the operator shall submit evidence to the Department of the following:

(i) The operator notified the landowner by certified mail or personal service of the landowner's rights in sections 5.1—5.3 of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.5a—1406.5c), and the effect on the landowner of the landowner's denial to the operator of access to the site as described in section 5.2(d) of The Bituminous Mine Subsidence and Land Conservation Act.

(ii) The operator's attempt to conduct a survey.

(iii) The landowner failed to authorize access to the operator to conduct a survey within 10 days of receipt of the operator's notice of intent to conduct a survey.

(b) *Restoration or replacement of water supplies.* When underground mining activities conducted on or after August 21, 1994, affect a public or private water supply by contamination, diminution or interruption, the operator shall promptly restore or replace the affected water supply with a permanent alternate source which adequately serves the premining uses of the water supply and any reasonably foreseeable uses of the water supply. The operator shall be relieved of any responsibility under The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21) to restore or replace a water supply if the operator demonstrates that one of the provisions of § 89.152 (relating to water supply replacement: special provisions) relieves the operator of further responsibility. This subsection does not apply to water supplies affected by underground mining activities which are covered by Chapter 87 (relating to surface mining of coal).

\* \* \* \* \*

(e) *Temporary water supplies.*

(1) If the affected water supply is within the rebuttable presumption area and the rebuttable presumption applies and the landowner or water user is without a readily available alternate source, the operator shall provide a temporary water supply within 24 hours of being contacted by the landowner or water supply user or the Department, whichever occurs first.

(2) An operator shall promptly provide a temporary water supply if the operator or the Department finds that the operator's underground mining activities have caused contamination, diminution or interruption of an EPACT water supply, and the landowner or water user is without a readily available alternate source of water. This re-

quirement applies regardless of whether the water supply is located within, or outside of, the rebuttable presumption area.

(3) The temporary water supply provided under this subsection must meet the requirements of subsection (f)(2) and provide a sufficient amount of water to meet the water supply user's needs.

(f) *Adequacy of permanently restored or replaced water supply.* A permanently restored or replaced water supply shall include any well, spring, municipal water supply system or other supply approved by the Department, which meets the criteria for adequacy as follows:

(1) *Reliability, maintenance and control.* A restored or replaced water supply, at a minimum, must:

(i) Be as reliable as the previous water supply.

(ii) Be as permanent as the previous water supply.

(iii) Not require excessive maintenance.

(iv) Provide the owner and the user with as much control and accessibility as exercised over the previous water supply.

(2) *Quality.* A restored or replaced water supply will be deemed adequate when it differs in quality from the premining water supply, if it meets the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 750.1—750.20), or is comparable to the premining water supply when that water supply did not meet these standards.

(3) *Adequate quantity.* A restored or replaced water supply will be deemed adequate in quantity if it meets one of the following:

(i) It delivers the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(ii) It is established through a connection to a public water supply system which is capable of delivering the amount of water necessary to satisfy the water user's needs and the demands of any reasonably foreseeable uses.

(iii) For purposes of this paragraph and with respect to agricultural water supplies, the term reasonably foreseeable uses includes the reasonable expansion of use where the water supply available prior to mining exceeded the farmer's actual use.

(4) *Water source serviceability.* A replacement of a water supply must include the installation of any piping, pumping equipment and treatment equipment necessary to put the replaced water source into service.

(5) *Cost to landowner or water user.* A restored or replacement water supply must meet the following costs criteria:

(i) The restored or replacement water supply may not cost the landowner or water user more to operate and maintain than the previous water supply.

(ii) If the operation and maintenance costs of the restored or replacement water supply are more than the operation and maintenance costs of the previous water supply, the operator shall provide for the permanent payment of the increased operating and maintenance cost of the restored or replacement water supply.

(iii) Upon agreement by the operator and the landowner or water user, the obligation to pay the increased operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present

worth of the increased annual operation and maintenance costs for a period agreed to by the operator and the landowner or water user.

**§ 89.146a. Water supply replacement: procedure for resolution of water supply damage claims.**

(a) Whenever a landowner or water supply user experiences contamination, diminution or interruption of a water supply which is believed to have occurred as a result of underground mining activities, the landowner or water user shall notify the operator. The operator shall diligently investigate the water loss. This subsection does not apply to water supplies affected by underground mining activities which are governed by Chapter 87 (relating to surface mining of coal).

(b) The Department will order the operator to provide temporary water to the landowner or water supply user within 24 hours of issuance of the order if the following apply:

- (1) No alternate temporary water supply is available to the landowner or water user.
- (2) The water supply is contaminated, diminished or interrupted.
- (3) The water supply is located within the rebuttable presumption area.
- (4) The landowner notified the operator of the water supply problem.
- (c) If the affected water supply has not been restored or an alternate water supply has not been provided by the operator or if the operator provides and later discontinues an alternate source, the landowner or water supply user may so notify the Department and request that the Department conduct an investigation in accordance with the following procedure:

- (1) Within 10 days of notification, the Department will commence an investigation of landowner's or water supply user's claim.
- (2) Within 45 days of notification, the Department will make a determination of whether the contamination, diminution or interruption was caused by the operator's underground mining activities. The Department will notify the affected parties of its determination within 10 days of completing the investigation.
- (3) If the Department determines that the operator's underground mining activities caused the water supply to be contaminated, diminished or interrupted, the Department will issue any orders that are necessary to assure compliance with The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21) and this chapter.

**§ 89.152. Water supply replacement: special provisions.**

- (a) In the case of an EPACT water supply, an operator may not be required to restore or replace the water supply if one of the following has occurred:
  - (1) The Department has determined that a replacement water supply meeting the criteria in § 89.145a(f) (relating to water supply replacement: performance standards) cannot be developed and the operator has purchased the property for a sum equal to the property's fair market value immediately prior to the time the water supply was affected or has made a one-time payment equal to the difference between the property's fair market value deter-

mined immediately prior to the time the water supply was affected and the fair market value determined at the time payment is made.

(2) The landowner and operator have entered into a valid voluntary agreement under section 5.3(a)(5) of The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. § 1406.5c(a)(5)) which does not require restoration or replacement of the water supply and the Department has determined that an adequate replacement water supply could feasibly be developed.

(3) The operator can demonstrate one of the following:

- (i) The contamination, diminution or interruption existed prior to the underground mining activities as determined by a premining survey, and the operator's underground mining activities did not worsen the preexisting contamination, diminution or interruption.
- (ii) The contamination, diminution or interruption occurred more than 3 years after underground mining activities occurred.
- (iii) The contamination, diminution or interruption occurred as the result of some cause other than the underground mining activities.

(b) In the case of a water supply other than an EPACT water supply, an operator will not be required to restore or replace a water supply if the operator can demonstrate one of the following:

- (1) The contamination, diminution or interruption existed prior to the underground mining activities as determined by a premining survey, and the operator's underground mining activities did not worsen the preexisting contamination, diminution or interruption.
- (2) The contamination, diminution or interruption is due to underground mining activities which occurred more than 3 years prior to the onset of water supply contamination, diminution or interruption.
- (3) The contamination, diminution or interruption occurred as the result of some cause other than the underground mining activities.
- (4) The claim for contamination, diminution or interruption of the water supply was made more than 2 years after the water supply was adversely affected by the underground mining activities.

(5) That the operator has done one of the following:

- (i) Has purchased the property for a sum equal to the property's fair market value immediately prior to the time the water supply was affected or has made a one-time payment equal to the difference between the property's fair market value determined immediately prior to the time the water supply was affected and the fair market value determined at the time payment is made.
- (ii) The landowner and operator have entered into a valid voluntary agreement under section 5.3 of The Bituminous Mine Subsidence and Land Conservation Act which does not require restoration or replacement of the water supply or authorizes a lesser amount of compensation to the landowner than provided by section 5.3(a)(5) of The Bituminous Mine Subsidence and Land Conservation Act.

(c) This section does not apply to underground mining activities which are governed by Chapter 87 (relating to surface mining of coal).

[Pa.B. Doc. No. 05-1944. Filed for public inspection October 21, 2005, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

### [25 PA. CODE CHS. 91 AND 92]

#### Concentrated Animal Feeding Operations and Other Agricultural Operations

The Environmental Quality Board (Board) by this order amends §§ 91.1, 91.35, 91.36, 92.1 and 92.5a. These amendments conform current Department of Environmental Protection (Department) regulations to the revised Federal regulations for concentrated animal feeding operations (CAFOs). The amendments also make some substantive and organizational changes to existing regulations regarding agricultural operations in this Commonwealth.

These amendments were adopted by the Board at its meeting on June 21, 2005.

##### A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

##### B. *Contact Persons*

For further information, contact Cedric Karper, Chief, Division of Conservation Districts and Nutrient Management, Bureau of Watershed Management, Rachel Carson State Office Building, P. O. Box 8465, Harrisburg, PA 17105-8465, (717) 783-7577; or Douglas Brennan, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301, (717) 787-9373. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department's website: [www.dep.state.pa.us](http://www.dep.state.pa.us).

##### C. *Statutory Authority*

The final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

##### D. *Background*

###### 1. *Purpose.*

The primary purpose of these revisions to Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) is to allow the Commonwealth to maintain delegation of the National Pollutant Discharge Elimination System (NPDES) CAFO program, which was revised by the Federal government in 2003. The purpose of these revisions to Chapter 91 is to strengthen existing requirements for pollution control and prevention at agricultural operations which are not subject to the NPDES permit requirements of Chapter 92 relating to CAFOs. In particular, the proposed Chapter 91 (relating to general provisions) revisions clarified and strengthened the requirements related to agricultural discharges, including provisions for manure storage facilities and land application of manure. Those revisions included a provision

which authorized the Department to establish "appropriate vegetated buffers and setbacks . . . to protect and maintain water quality." The final Chapter 91 regulation also contains a setback requirement, although it has been revised to focus on the highest risk operations.

The revisions are also intended to implement a regulatory program for livestock and poultry operations that reasonably controls the risk to the environment in a sustainable way, with due regard for the economic importance of the industry and other societal benefits, using the input from the public and important stakeholders and relying as much as possible on the existing successful CAFO program.

The most recent (2002) Commonwealth report on the quality of surface waters listed agriculture as the second leading cause of impairment. Improper management of nutrients such as manure and fertilizers, as well as lack of stormwater runoff controls, are the primary contributing factors to these water quality problems around the Commonwealth. Livestock and poultry operations, including large-scale operations whose animals generate large amounts of manure, present risks of water pollution. In addition, many of the Commonwealth's agricultural operations are in the Chesapeake Bay watershed. This requires a special focus on best management practices to protect and restore that important resource, and to meet Pennsylvania's legal obligations under the Federal Clean Water Act.

At the same time, agriculture is an important industry in this Commonwealth, providing livelihood for thousands of citizens and their families. In addition, agricultural lands provide significant aesthetic and environmental benefits to this Commonwealth. Finally, agriculture is an important part of the cultural fabric of this Commonwealth.

##### 2. *Federal CAFO Regulations.*

To address the environmental risks posed by large-scale livestock and poultry operations, the United States Environmental Protection Agency (EPA) promulgated a comprehensive set of revised regulations governing CAFOs in February 2003. These regulations greatly expanded existing Federal rules put in place over 20 years ago, to strengthen the existing regulatory program for CAFOs. The regulations revised 40 CFR Parts 122 and 412 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination system; and concentrated animal feeding operations (CAFO) point source category).

The Department already had in place NPDES permit regulations for CAFOs in § 92.5a (relating to CAFOs). These regulations were previously approved by the EPA as part of a delegation agreement to administer the Federal program in this Commonwealth. To maintain delegation of the Federal program, the Department must demonstrate that its regulations meet the new Federal requirements. In the case of the Commonwealth, the existing CAFO regulations, along with Chapter 83, Subchapter D (relating to nutrient management) promulgated by the State Conservation Commission (Commission), Chapters 91 and 102 (relating to erosion and sediment control), previously contained many of the new Federal requirements. These regulations have been in place for several years and have achieved wide acceptance in the agricultural community as well as various stakeholders such as Department regional offices, the Department of Agriculture, the Commission, the Nutrient Management Advisory Board and the county conservation districts.

### 3. *Public Comment.*

These final regulations reflect public comments received after the proposed changes were published in August 2004. For instance, the preponderance of comments received on manure storage and appropriate setbacks and buffers in the proposed Chapter 91 revisions urged clear, simple and enforceable standards to apply to farm operations based upon science rather than regulatory categories or Department discretion. Similar discussions arose in response to the administration's Agriculture, Communities and Rural Environment initiative (ACRE), during the public comment period for the proposed regulations. ACRE is the result of Governor Rendell's directive to the Secretaries of Agriculture and Environmental Protection to develop a comprehensive, progressive plan to support farmers' rights under the act of June 10, 1982 (P. L. 454, No. 133), known as the Right-to-Farm Law (3 P. S. §§ 951—957) and to address the concerns over animal feeding operations that spawn ordinances restricting farming. The Governor directed the agencies to require minimum buffer areas where no manure can be applied for all CAFOs and CAOs, and that farms that import manure must meet the same buffer requirements as the farm that produces the manure. Therefore, these final regulations establish a minimum 100 foot setback or 35 foot vegetated buffer for all CAFOs, CAOs and importing farms, which correspond to minimum National criteria for nutrient reduction. In addition, these final regulations require water quality management permits for new or expanded manure storage facilities based upon volume and criteria related to potential for pollution.

The CAFO Stakeholder Group (Group) that assisted the Department in developing the proposed rulemaking also assisted with these final regulations. The Department has also sought the advice of the Agricultural Advisory Board in developing these final regulations.

#### E. *Summary of Changes from the Proposed Rulemaking*

The regulatory scheme for agricultural operations contains several levels of requirements, which increase in stringency as the risk of impacts to water resources increases. The final rulemaking makes changes at several of those levels, and has been developed concurrently with regulation changes by the Commission under Chapter 83, Subchapter D (relating to nutrient management).

##### 1. *CAFOs.*

One main focus of this final rulemaking is CAFOs, the largest livestock and poultry operations in this Commonwealth. The basic requirement for CAFOs will continue to be to obtain a permit under the Department's program implementing the NPDES Program. The NPDES permit program has several fundamental requirements, some of which are new or which contain new elements to conform to the new Federal requirements. Underlying the NPDES requirements are several other levels of requirements:

a. *Manure Management.* First, agricultural operations in this Commonwealth, including CAFOs, must meet construction and operation requirements for manure storage, and for land application. These broad based regulations are currently described in §§ 91.35 and 91.36 (relating to wastewater impoundments; and pollution control and prevention at agricultural operations), which are administered by the Department. The final rule consolidates them into one section, § 91.36. CAFOs, which have large and higher risk manure storage facilities, have special permitting requirements above and beyond those of most other livestock and poultry opera-

tions, and this final rule preserves that extra protection. For swine, poultry and veal operations, these protections are increased, consistent with the revised Federal CAFO regulations.

b. *Conservation Practices.* Second, all agricultural operations that conduct plowing and tilling, including CAFOs, must develop and implement an erosion and sediment control plan to limit runoff, under Chapter 102 (relating to erosion and sediment control), also administered by the Department. These plans are important to the prevention of surface water pollution by phosphorus from manure and other nutrient sources applied to the land as fertilizer. The final rule specifies that the erosion and sediment control plans must be submitted with CAFO permit applications.

c. *Nutrient Management.* Third, the approximately 840 CAOs (some of which are also CAFOs) regulated under Chapter 83 (relating to State Conservation Commission) based on their concentration of animals (as opposed to their absolute numbers of animals) must meet a series of requirements related to nutrient management. These requirements currently include testing of soils and manure for nitrogen and phosphorus, determination of agronomic needs of the crops based on nitrogen (as well as phosphorus, after a decision of the Environmental Hearing Board (EHB) in April 2004), land application of manure based on those tests and on crop needs, and stormwater runoff controls around the farmstead. These requirements, including the need to have a nutrient management plan (NMP) approved by the local county conservation district, are also imposed on CAFOs under the existing and final regulations. The NMPs are subject to appeal to the EHB.

Chapter 83 is promulgated by the Commission and is administered primarily through county conservation districts. Extensive revisions to Chapter 83 were proposed in a rulemaking at the same time the Board proposed changes to these regulations. (Editor's Note: For the document relating to those proposed revisions see 34 Pa.B. 4361 (August 7, 2004).) The Chapter 83 final regulations are expected to be approved by the Commission later in 2006.

The amendments to Chapter 83 include new, additional requirements for addressing the impacts on water quality from phosphorus (in addition to nitrogen) and more frequent soil and manure testing for nitrogen and phosphorus. They also are expected to significantly increase the regulation of the export of manure. These amendments are relevant to CAFOs because § 92.5a requires CAFOs to have an NMP under Chapter 83.

Although it has been important to keep the Chapter 83 and the CAFO and other agricultural operations regulation updates on a coordinated schedule through development, they can now proceed independently to final. These final regulations can be fully implemented and satisfy Federal CAFO requirements independent of finalization of revisions to Chapter 83. This is important because of the Federal deadlines of April 2005 for states to update their CAFO program requirements and various dates in 2006 for CAFOs to implement the new requirements, under the Federal CAFO regulations. This is possible primarily because of an EHB decision in 2004 and subsequent Commission action that required immediate implementation of phosphorus-based nutrient management planning. Other significant Federal CAFO requirements are independently addressed in these final regulations and in the existing Chapter 83 requirements.

d. *Federal CAFO Requirements.* Finally, Chapter 92 contains the Department's NPDES regulations and

§ 92.5a governs CAFOs. Section 92.5a incorporates the other requirements already applicable to agricultural operations found in Chapters 83, 91 and 102, and adds special requirements for CAFOs within the Department's NPDES permit program. These final regulations make several changes to § 92.5a, as well as the related definitions in § 92.1 (relating to definitions), to conform to the new EPA CAFO regulations:

- A revised definition of "CAFO" expands the scope of these regulations to include all Federally defined large CAFOs as well as all operations with over 1,000 animal equivalent units (AEUs) and CAOs with greater than 300 AEUs.
- A new definition of "livestock" to include horses.
- Definitions of "manure" and "agricultural process wastewater."
- A timetable for poultry operations with dry manure to apply for NPDES CAFO permits.
- Setback requirements at CAFOs from surface waters for land application of manure.
- Recordkeeping and reporting requirements that are identified in the NPDES permit and also in the Department's implementation strategy to be published later in 2005.
- A PPC plan for chemicals.
- Implementation of management controls on the export of manure away from the CAFO.
- Compliance with 3 Pa.C.S. §§ 2301—2389 (relating to Domestic Animal Law) when handling animal mortality.
- Effluent limits and conditions for treated wastewater discharges from CAFOs.

- Limits on field storage of CAFO manure and proper management of CAFO feed and supply storage areas.

e. *Definition of a "CAFO."* This final rulemaking amends the definition of a "CAFO" to alter the way in which a discharge to surface waters from the operation would trigger the CAFO requirements. The existing regulations consider any agricultural operation, no matter how small, to be a CAFO if it has a discharge to surface waters. The final rulemaking replaces this broad CAFO designation authority with an emphasis on enforcing The Clean Streams Law requirements to address unauthorized discharges. This change is based on the focus of the CAFO regulations: large animal operations. For the most part, these regulations do not allow discharges. Smaller operations that have discharges are subject to other, more basic requirements and prohibitions under The Clean Streams Law. The Board believes that the CAFO program should keep its focus on permitting (and monitoring) larger operations. The final rulemaking adds new language highlighting The Clean Streams Law general prohibitions against unpermitted discharges to surface waters including medium and small operations with discharges that would otherwise lead to a CAFO permitting process under the Federal regulations.

In addition, the Board added a category of operations that will be a CAFO—operations designated as large CAFOs by the EPA. The purpose of this provision is to satisfy the new Federal definition of a CAFO, which does not use the Pennsylvania approach of "animal equivalent units."

f. *Comparison of Federal CAFO Regulations and the Pennsylvania CAFO Program.*

The following table summarizes the requirements in the Federal regulations and the associated Pennsylvania regulations that are used in this final rulemaking to meet those requirements.

<i>Issue</i>	<i>EPA—New Rule</i>	<i>Department/Commission Regulations</i>
Definitions	§§ 122.23(b)(4), (6) and (7); and 412.4(b)	§ 92.1
NMP	§§ 122.42(e)(1) and 412.4(c)(1)	§ 92.5a(f)(1) and Chapter 83
—Storage	§ 122.42(e)(1)(i)	§§ 91.36(a), 92.5a(e)(1)(ii), (3) and (6) and § 92.5a(f)(4), (7)
—Dead animals	§§ 122.42(e)(1)(ii) and 412.37(a)(4)	§ 92.5a(f)(3)
—Stormwater management	§ 122.42(e)(1)(iii)	§ 92.5a(f)(1) and Chapter 83
—Animal contact with waters of the United States	§ 122.42(e)(1)(iv)	§ 92.5a(f)(1) and Chapter 83
—Chemical handling	§ 122.42(e)(1)(v)	§ 92.5a(f)(1)
—Conservation practices	§ 122.42(e)(1)(vi)	§ 92.5a(f)(1) and Chapters 83 and 102
—Testing of manure and soil	§§ 122.42(e)(1)(vii) and 412.4(c)(3)	§ 92.5a(f)(1) and Chapter 83
—Land application protocols	§§ 122.42(e)(1)(viii) and 412(c)(2)	§ 92.5a(f)(1) and Chapter 83
—Recordkeeping for NMP	§§ 122.42(e)(1)(ix) and (e)(2) and 412.37(b) and (c)	§ 92.5a(f)(5)
Manure transfer (export)	§ 122.42(e)(3)	§ 92.5a(e)(1) and (f)(1) and Chapter 83
Annual report	§ 122.42(e)(4)	§ 92.5a(f)(5)
Nitrogen and phosphorus	§ 412.4(c)(1)	§ 92.5a(f)(1) and Chapter 83 (Including 2004 EHB decision on P-Based planning)

<i>Issue</i>	<i>EPA—New Rule</i>	<i>Department/Commission Regulations</i>
Maintenance of land application equipment	§ 412.4(c)(4)	§ 92.5a(f)(1) and Chapter 83
Setback requirements	§ 412.4(c)(5)	§ 92.5a(e)(1)(i)
Discharge prohibition from production areas	§ 412	§§ 91.36(a)(1) and (5), 92.5a(f)(1) and (7)
Visual inspections of production area	§ 412.37(a)(1) and (3)	§ 92.5a(f)(1) and Chapter 83
Depth markers	§ 412.37(a)(2)	§§ 91.36(a) and 92.5a(f)(4)

2. *Other Agricultural Operations; Setbacks and Buffers.*

The Group that assisted the Department in the development and finalization of this final rulemaking identified smaller livestock and poultry operations as causing a substantial portion of pollution problems created by agriculture. To address this, the amendments to § 91.36(c) emphasize the responsibility of all agricultural operations to prevent the discharge of pollutants to waters of this Commonwealth under The Clean Streams Law. In addition, the amendments in § 91.36(a)(4) require permits for new or expanded liquid or semisolid manure storage at operations smaller than those currently required to obtain a permit, to minimize the risk of impacts to water resources. Section 91.36(a)(4) also establishes specific size, type and location criteria for permit requirements for new or expanded manure storage facilities.

In addition, the Board has narrowed the focus of § 91.36(b)(2), which now establishes minimum setback and buffer requirements for (1) CAOs and farms which import manure from CAOs, as well as for (2) CAFOs and their manure import sites. The setbacks and buffers for CAOs and importers only apply to certain key types of waterbodies. The Board recognizes that the scope of this provision includes farms that are also regulated under the Nutrient Management Act (3 P.S. §§ 1701—1718) which was repealed by Act 38-2005 hereinafter referred to as Act 38. Therefore, the Board has included a special provision in its Order that terminates the part of this subsection applicable to CAOs and their importers, if the Commission promulgates regulations which impose, at a minimum, the same setback and buffer requirements on CAOs and their importers. This special provision is not applicable to CAFOs or their importers, and is not intended to affect the duty of all agricultural operations to comply with The Clean Streams Law and other provisions in Chapters 91 and 92.

3. *Chapter 91.*

§ 91.1. Definitions of “CAO” and “CAFO” are added to explain key terms in the setback provision in § 91.36(b)(2). A definition of “manure storage capacity” is added to clarify the meaning of § 91.36(a)(4) regarding the volume of storage that will be used in determining if a permit is required. A definition of “agricultural process wastewater” is added to identify other wastewaters such as egg wash water and milkhouse wastewater that are part of normal farming operations and regulated under § 91.36. A definition of “manure” has been added for clarity. The proposed definition of “setback” has been deleted.

§ 91.36(a)(1). The references to the Manure Management Manual and the Pennsylvania Technical Guide in this paragraph, and in § 91.36(a)(2) and (b)(1)(i), are revised to properly describe the purpose of the practices, standards and criteria that are contained in these guid-

ance documents. They are intended to be used as tools for agricultural operations to meet the basic regulatory requirements, and avoid the need to obtain a permit or approval from the Department.

§ 91.36(a)(2), (3) and (4). The categories of manure storage facilities requiring permits is clarified. A new requirement for operators to maintain copies of engineer certifications has been added.

§ 91.36(a)(6)(i). The freeboard requirements for manure storage facilities are simplified to be consistent with the Pennsylvania Technical Guide and to allow a minimum 6 inch freeboard for storage facilities not exposed to rainfall.

§ 91.36(a)(7). The general statement that the Department may require any manure storage facility to obtain a permit has been deleted. This authority already exists for the types of situations where this would be applied.

§ 91.36(b)(2). This subsection (b)(2) is revised from the general provision for requiring setbacks and buffers adequate to protect water quality at any agricultural operation, to target CAOs, CAFOs and CAFO/CAO manure import sites, for implementation of a 100 foot setback or 35 foot vegetated buffer. For CAOs and importers, the setbacks and buffers only apply to certain key types of waterbodies. The Board has included a special provision in its order that terminates the part of this subsection applicable to CAOs and their importers, if the Commission promulgates regulations which impose, at a minimum, the same setback and buffer requirements on CAOs and their importers. This special provision is not applicable to CAFOs or their importers, and is not intended to affect the duty of all agricultural operations to comply with The Clean Streams Law or other provisions of Chapters 91 and 92.

§ 91.36(c)(2). This provision is added to clarify that operations that would otherwise be considered small and medium CAFOs under the Federal regulations will be addressed as enforcement cases under The Clean Streams Law.

4. *Chapter 92.*

§ 92.1. The definition of “CAFO” is revised to eliminate the designation of any operation as a CAFO and to delete operations with “authorized discharges.” These changes help to simplify the definition and eliminate objectionable broad authority to designate operations as CAFOs. To address concerns over consistency with the Federal definition relative to small and medium sized operations, operations with illegal discharges will be addressed as Clean Streams Law enforcement cases.

§ 92.1. The definition of “setback” is revised to specify the point from which setbacks are to be measured and examples of surface water conduits are added to be consistent with the Federal definition of “setback.” Defini-

tions of “agricultural process wastewater” and “manure” are added to be consistent with the Federal definitions. A revised definition of “CAOs” is included to be consistent with the § 91.1 definitions.

§ 92.5a(d). A new provision was added to ensure that all operations that are required to obtain permits have a permit application deadline which applies to them.

§ 92.5a(e)(1)(ii). A limit of 14 days for stockpiling CAFO manure on CAFO operations without cover or protection is added. The EPA has stipulated this limit, and persons representing the category of CAFO operations that are impacted have indicated that this is manageable. Given the current “CAFO” definition, this is an appropriate requirement for management of dry manure from these operations. There are no expectations to extend this requirement to other operations. Manure stockpiling for other high-risk operations will be regulated through the Nutrient Management Act regulations and any discharge of pollutants from any manure stockpiles is subject to enforcement under The Clean Streams Law.

§ 92.5a(e)(5) and (f)(6). With the change in the CAFO definition to eliminate confusion by deleting the reference to operations with an “authorized discharge,” language was added to this subsection to address the same issue—to allow CAFO permit applicants to include design plans and specifications for manure treatment systems with a treated wastewater discharge. This is to encourage innovative technologies, including energy generation projects, by consolidating water quality permitting requirements. In these cases, the permit will include effluent limits and conditions determined in the same way as they are for other NPDES discharge permits as required by § 92.2a.

§ 92.5a(e)(6) and (f)(7). For consistency with Federal requirements, a provision was added to account for runoff from CAFO feed and supply storage areas in CAFO permit applications. This runoff can be a source of pollution. Applicants may address this runoff as part of the nutrient management plan or as separate plans and practices submitted with the application.

#### F. Summary of Comments and Responses on the Proposed Rulemaking

Written comments were received from 191 commentators during the public comment period between August 7, 2004, and November 5, 2004. Oral testimony was also received at two public hearings conducted in Mechanicsburg, PA and DuBois, PA in October 2004.

Comments concerned the following general topics: the definition of a CAFO, setback and buffer requirements for land application of manure (both for CAFOs and for all other agricultural operations), manure storage facilities, economics, enforcement/accountability, CAFO permit review considerations and CAFO permit conditions. In general, as one would expect, environmental commentators advocated stricter, more expansive regulatory requirements, while farming interests wanted to limit the requirements. The comment/response document provides detailed responses to these comments, explaining the Department’s position.

##### 1. Definition of a “CAFO”

Based on the comments received, the definition of “CAFO” has been revised to delete language regarding: (1) the general authority for the Department to designate operations as CAFOs in certain circumstances; and (2)

operations with treated discharge authorized by the Department. These provisions created unnecessary confusion and concern.

In addition, the EPA and others commented on the absence of “medium” and “small” CAFOs as described in the Federal CAFO definition, which requires that a discharge be present at the operation. In response to these comments additional language was included in § 91.36(c) to clarify the Department’s intent to address these situations as violations with enforcement actions under The Clean Streams Law. CAFOs with authorized discharges—treated wastewater discharges—are now addressed in the provisions for CAFO permit applications and permit conditions.

##### 2. Setbacks and Buffer Requirements for Land Application of Manure

General provisions for all agricultural operations were proposed for manure application setbacks and vegetated buffers adequate to protect water quality. Again, a wide range of comments resulted from this provision. The Federal standard, 100 foot setback or 35 foot buffer for CAFO operations, remains in the final regulation, and a parallel provision was added to § 91.36(b) for consistency. For CAOs, and for CAO and CAFO manure import sites, § 91.36(b) now contains a focused Statewide setback/buffer requirement to prevent pollution from land application of manure, using the same distances as for CAFOs. The Board has included a special provision in its order that terminates the part of this subsection applicable to CAOs and their importers, if the Commission promulgates regulations which impose, at a minimum, the same setback and buffer requirements on CAOs and their importers. This special provision is not applicable to CAFOs or their importers, and is not intended to affect the duty of all agricultural operations to comply with The Clean Streams Law or other provisions of Chapters 91 and 92. Consistent with the NPDES program, the CAFO setbacks and buffers apply to all surface waters as defined in Chapter 92, whereas the setbacks for the other operations only apply to certain key types of waterbodies.

##### 3. Manure Storage Facilities

Similar comments were raised concerning general designation provisions for permit requirements for manure storage. Refinements to the Manure Management Manual under existing authority can be used to better define acceptable standards for manure and agricultural process wastewater storage in Special Protection and agriculture impaired watersheds. The specific requirement for manure storage permits—new and expanding, liquid and semisolid manure storage ponds between 1 million and 2.5 million gallons in special protection and agriculture impaired watershed and all new and expanding liquid and semisolid manure storage facilities over 2.5 million gallons—remains in these final regulations. Generally, comments were not critical of these requirements.

The proposed CAFO regulations did not have a provision for field stockpiling of manure because these provisions are being included in the nutrient management regulation revisions. CAFOs are subject to those requirements. The EPA commented that the proposed revisions in the Nutrient Management regulations did not meet their limitations on field stacking. As a result a 14-day limit of stockpiling of CAFO manure on CAFO operations was added to the final CAFO regulations. Through the work group formed to assist with this regulation development and follow up discussions with those impacted by this addition it was determined that this would be an

inconvenience but manageable. There is no expectation to expand this requirement to other operations. Other operations will fall under the requirements of the nutrient management regulations and Chapter 91. Any discharge of pollutants from any manure stockpile is subject to enforcement action under The Clean Streams Law.

#### 4. *Economics*

A number in the regulated community raised the concern of cost. In general, the final regulations reduce these concerns. The incremental costs of meeting new requirements under the revised regulations is minimal other than the cost of obtaining a permit in some cases since most practices and standards should have already been met under existing requirements.

#### 5. *Enforcement/Accountability*

Comments were provided on the level of enforcement of existing and new requirements. Noncompliance with existing requirements is a cause of agriculturally driven water quality impairment. Regulations alone will not solve this concern. Allocation and alignment of resources is important. A reorganization to give higher priority and focus to nonpoint sources, including agriculture, and additions to compliance resources for these programs are planned by the Department.

### G. *Benefits, Costs and Compliance*

#### 1. *Benefits*

Human health and the environment will benefit because agricultural operations, including CAFOs, will be required to effectively manage the manure and agricultural process wastewater that they produce. The largest and most concentrated operations are targeted under the CAFO program. The Department estimates that there will be a total of 350 CAFOs in this Commonwealth, as defined under this final-form rulemaking (there are approximately 160 now), mostly in the central parts of this Commonwealth. The population of the Susquehanna River Basin, in particular, will benefit from enhanced water quality and associated economic and recreational benefits. The final-form rulemaking will also complement the Commonwealth's efforts to meet its commitments to the Chesapeake Bay Program and will help to address agricultural nonpoint sources of pollution that are among the most significant sources of water quality impairment in this Commonwealth. It clarifies the regulation of agricultural process wastewater on agricultural operations. The CAFO permitting process will also help farmers critically assess the costs and benefits of developing CAFOs before they make substantial financial commitments.

#### 2. *Compliance Costs*

There will be compliance costs for some agricultural operations around this Commonwealth, especially existing poultry producers that will be newly regulated as CAFOs, new or expanded operations which become CAFOs, some agricultural operations with manure storage capacity greater than 1 million gallons, and operations with additional costs associated with setback/buffer requirements.

The approximately 190 operations that are expected to be directly affected by the new CAFO regulations should not be surprised by the changes. The EPA began soliciting comments on the proposed Federal rule changes about 4 years ago. Fact sheets, reports and the Federal AFO/CAFO Strategy were widely circulated to both government and industry for review and comment. The large poultry and swine integrators have been expecting these

changes. In addition, Department staff have met with the poultry and swine representatives during the development of the proposed rulemaking. The technical capacity in the private sector for preparing the permit applications exists, although the timeline established by the Department in § 92.5a(b)—(d) will dictate the burden placed on these resources.

The Department does not have detailed information on the anticipated CAFO compliance costs in this Commonwealth. Using information from the EPA on the average costs of obtaining an NPDES CAFO permit, costs are estimated to be no more than the following:

—Existing operation, general permit: \$1,000 to \$2,500.

—Existing operation, individual permit: \$1,500 to \$3,500.

—New or expanded operation: \$10,000 to \$15,000.

In addition to the costs for obtaining a CAFO permit, smaller CAFOs and some agricultural operations will incur expenses to obtain permits for large manure storage facilities. The Department estimates those costs to be up to \$1,500 to \$3,500 per storage facility.

#### 3. *Compliance Assistance Plan*

To help these livestock and poultry operations meet the proposed rulemaking's requirements, Congress increased funding for land and water conservation programs in the 2002 Farm Bill by \$20.9 billion Nationwide, bringing total funding for these programs to \$51 billion over the next decade. The Environmental Quality Incentives Program (EQIP) was authorized at \$200 million in 2002 and will ultimately go up to \$1.3 billion in 2007; 60% of those funds must go to livestock operations. The Commonwealth's allocation is approximately \$8 to \$10 million annually. New technology is also being perfected to aid farmers in meeting the proposed rulemaking.

Several financial assistance programs are available to livestock producers in this Commonwealth. Federal grants, such as EQIP and the Conservation Reserve Enhancement Program are available. State cost share and grant programs such as the Chesapeake Bay Program, Growing Greener and the Nutrient Management Program grants and low interest loans through Agrilink are also available.

Additionally, compliance assistance efforts following the enactment of the new regulations will be in the form of education and outreach by the conservation districts, Penn State Extension and Department trainings and fact sheets.

#### 4. *Paperwork Requirements*

The final rulemaking will cause no additional paperwork (for example, reporting forms, recordkeeping, application forms, letters, public notices, and the like) for existing CAFOs in this Commonwealth.

It should be noted that the Department has been actively endorsing electronic data reporting instead of conventional paper form reporting to water systems throughout this Commonwealth. If employed, electronic data reporting would greatly reduce a CAFO's current paperwork requirements.

#### H. *Pollution Prevention*

Management of agricultural manure under these regulations is based on the premise of recycling the nutrients for crop production. Properly managing and applying manure for crop growth prevents pollution and reduces the need for commercial fertilizers.



### I. *Sunset Review*

The final rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

### J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 28, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4353, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 24, 2005, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 25, 2005 and approved the final-form regulations.

### K. *Findings of the Board*

The Board finds that:

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

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

(3) These regulations do not enlarge the purpose of the proposal published at 34 Pa.B. 4353 (August 7, 2004).

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

### L. *Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 91 and 92, are amended by amending §§ 91.1, 91.35, 91.36, 92.1 and 92.5a to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) Section 91.36(b)(2)(i) and (ii) shall remain in effect until the effective date of regulations promulgated by the Commission that establish requirements which provide, at a minimum, the same setback and buffer requirements for concentrated animal operations, and for agricultural operations that import manure from those operations, established in § 91.36(b)(2). The Department will publish notice in the *Pennsylvania Bulletin* if those regulations are promulgated. Nothing in this order is intended to affect the duty of any agricultural operation to comply with The Clean Streams Law or any other provision of Chapters 91 and 92.

(c) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and

the Office of Attorney General for review and approval as to legality and form, as required by law.

(d) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

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

(f) This order shall take effect immediately upon publication.

KATHLEEN A. MCGINTY,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 5068 (September 10, 2005).)*

**Fiscal Note:** Fiscal Note 7-391 remains valid for the final adoption of the subject regulations.

## Annex A

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

#### Subpart C. PROTECTION OF NATURAL RESOURCES

#### ARTICLE II. WATER RESOURCES

#### CHAPTER 91. GENERAL PROVISIONS

#### GENERAL

#### § 91.1. Definitions.

The definitions in section 1 of The Clean Streams Law (35 P.S. § 691.1) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

*AEU—Animal equivalent unit*—One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit, as defined in 3 Pa.C.S. § 503 (relating to definitions).

*Act*—The Clean Streams Law (35 P.S. §§ 691.1—691.801).

*Agricultural operations*—The management and use of farming resources for the production of crops, livestock or poultry as defined in 3 Pa.C.S. § 503.

*Agricultural process wastewater*—Wastewater from agricultural operations, including from spillage or overflow from livestock or poultry watering systems; washing, cleaning or flushing pens, milkhouses, barns, manure pits; direct contact swimming, washing or spray cooling of livestock or poultry; egg washing; or dust control.

*Application*—The Department's form for requesting approval to construct and operate a wastewater collection, conveyance or treatment facility under a new water quality management permit, or the modification, revision or transfer of an existing water quality management permit.

*CAFO—Concentrated animal feeding operation*—An agricultural operation that meets the criteria established by the Department in § 92.1 (relating to definitions).

*CAO—Concentrated animal operation*—An agricultural operation that meets the criteria established by the State Conservation Commission in regulations under 3 Pa.C.S.

Chapter 5 (relating to nutrient management and odor management) in Chapter 83, Subchapter D (relating to nutrient management).

*Facility*—A structure built to collect, convey or treat wastewater which requires coverage under a water quality management permit.

*Federal Act*—The Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1387).

*General water quality management permit or general permit*—A water quality management permit that is issued for a clearly described category of wastewater treatment facilities, which are substantially similar in nature.

*Manure*—

(i) Animal excrement, including poultry litter, which is produced at an agricultural operation.

(ii) The term includes materials such as bedding and raw materials which are commingled with that excrement.

*Manure Management Manual*—The guidance manual published by the Department that is entitled “Manure Management Manual for Environmental Protection,” including its supplements and amendments. The manual describes approved manure management practices for all agricultural operations as required by § 91.36 (relating to pollution control and prevention at agricultural operations).

*Manure storage capacity*—The total volume in gallons of a manure storage facility, less any required freeboard, sufficient and available to contain all of the following:

(i) Accumulated manure and agricultural process wastewater during the storage period.

(ii) Normal precipitation less evaporation on the surface of the facility.

(iii) Normal runoff during the storage period.

(iv) The design storm precipitation and runoff (25 year or 100 year, as appropriate under § 91.36(a).

(v) Solids remaining after liquids have been removed.

*Manure storage facility*—A permanent structure or pond, a portion of a structure or pond, or a group of structures or ponds at one agricultural operation, utilized for the purpose of containing manure or agricultural process wastewater. This includes concrete, metal or other fabricated tanks and underbuilding structures, as well as earthen and synthetically-lined manure storage ponds.

*NOI—Notice of Intent*—A complete form submitted as a request for general water quality management permit coverage.

*Operator*—A person or other legal entity responsible for the operation or maintenance of a facility or activity subject to this chapter.

*Owner*—The person or other legal entity holding legal title to a facility or activity subject to this chapter.

*Pennsylvania Technical Guide (Guide)*—

(i) The Pennsylvania Soil and Water Conservation Technical Guide, including supplements and amendments, which is the primary technical guide published by the Pennsylvania office of the Natural Resources Conservation Service of the United States Department of Agriculture.

(ii) The Guide contains technical information, including design criteria, about conservation of soil, water, air, plant and animal resources specific to this Commonwealth.

(iii) The Guide is also referred to as the Field Office Technical Guide in Federal regulations and other documents.

*Pollutant*—A contaminant or other alteration of the physical, chemical or biological properties of surface water which causes or has the potential to cause pollution as defined in section 1 of the act (35 P. S. § 691.1).

*Pollution prevention*—Source reduction and other practices (for example—direct reuse or in-process recycling) that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.

*Pollution prevention measures*—Practices that reduce the use of hazardous materials, energy, water or other resources and that protect natural resources and human health through conservation, more efficient use, or effective pollutant release minimization prior to reuse, recycling, treatment or disposal.

*Schedule of compliance*—A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with effluent limitations, other limitations, prohibitions or standards.

*Single residence sewage treatment plant*—A system of piping, tanks or other facilities serving a single family residence located on a single family residential lot which collects, disposes and treats solely direct or indirect sewage discharges from the residences into waters of this Commonwealth.

*Stormwater*—Runoff from precipitation, snow melt runoff and surface runoff and drainage.

*Vegetated buffer*—A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.

*Wastewater impoundment*—A depression, excavation or facility situated in or upon the ground, whether natural or artificial and whether lined or unlined, used to store wastewater including sewage, animal waste or industrial waste.

*Water quality management permit*—A permit or equivalent document (Part II Permit) issued by the Department to authorize one of the following:

(i) The construction, erection and location of a wastewater collection, conveyance or treatment facility.

(ii) A discharge of wastewater to groundwaters of this Commonwealth.

**MANAGEMENT OF OTHER WASTES**

**§ 91.35. Wastewater impoundments.**

(a) Except as otherwise provided under subsections (c) and (d), a person may not operate, maintain or use or permit the operation, maintenance or use of a wastewater impoundment for the production, processing, storage, treatment or disposal of pollutants unless the wastewater impoundment is structurally sound, impermeable, protected from unauthorized acts of third parties, and is maintained so that a freeboard of at least 2 feet remains

at all times. The person owning, operating or possessing a wastewater impoundment has the burden of satisfying the Department that the wastewater impoundment complies with these requirements.

(b) A person owning, operating or in possession of an existing wastewater impoundment containing pollutants, or intending to construct or use a wastewater impoundment, shall promptly submit to the Department a report or plan setting forth the location, size, construction and contents of the wastewater impoundment and other information as the Department may require.

(c) Except when a wastewater impoundment is already approved under an existing permit from the Department, a permit from the Department is required approving the location, construction, use, operation and maintenance of a wastewater impoundment subject to subsection (a) in the following cases:

(1) If a variance is requested from the requirements in subsection (a).

(2) If the capacity of one wastewater impoundment or of two or more interconnected wastewater impoundments exceeds 250,000 gallons.

(3) If the total capacity of polluting substances contained in wastewater impoundments on one tract or related tracts of land exceeds 500,000 gallons.

(4) If the Department determines that a permit is necessary for effective regulation to insure that pollution will not result from the use, operation or maintenance of the wastewater impoundment.

(d) This section does not apply to:

(1) Manure storage facilities at agricultural operations, which are governed by § 91.36 (relating to pollution control and prevention at agricultural operations).

(2) Residual waste processing, disposal, treatment, collection, storage or transportation.

**§ 91.36. Pollution control and prevention at agricultural operations.**

(a) *Animal manure storage facilities.*

(1) Except when more stringent requirements are contained in paragraphs (2)–(5), a manure storage facility shall be designed, constructed, operated and maintained in accordance with current engineering and agronomic practices to ensure that the facility is structurally sound, water-tight, and located and sized properly, to prevent pollution of surface water and groundwater, including design to prevent discharges to surface waters during a storm up to and including a 25-year/24-hour storm.

(i) The Manure Management Manual and the Pennsylvania Technical Guide contain current engineering and agronomic practices which can be used to comply with the requirements in paragraph (1).

(ii) If the criteria in the Manure Management Manual and the Pennsylvania Technical Guide are not followed, the owner or operator shall obtain a water quality management permit or other approval from the Department for the manure storage facility.

(2) For liquid or semisolid manure storage facilities constructed after January 29, 2000, the owner or operator shall obtain a water quality management permit from the Department for the manure storage facility unless the design and construction of the facility are certified to meet the “Manure Management Manual” and “Pennsylvania Technical Guide” by a registered professional engi-

neer. The owner or operator shall retain a copy of the certification at the operation and provide a copy to the Department upon request.

(3) In the case of a new or expanded liquid or semisolid manure storage facility located at an animal operation with over 1,000 AEUs for the first time after January 29, 2000, a water quality management permit is required.

(4) For a new or expanded liquid or semisolid manure storage facility after October 22, 2005:

(i) Where the manure storage capacity is between 1 million and 2.5 million gallons, a water quality management permit is required for any manure storage facility that is a pond and one of the following applies:

(A) The nearest downgradient stream is classified as a High Quality or Exceptional Value water under Chapter 93 (relating to water quality standards).

(B) The nearest downgradient stream has been determined by the Department to be impaired from nutrients from agricultural activities.

(ii) Where the manure storage capacity is 2.5 million gallons or more, a water quality management permit is required.

(5) For new or expanded CAFOs that commenced operations after April 13, 2003, and that include swine, poultry or veal calves, the CAFO shall prevent discharges to surface waters during a storm event up to and including a 100-year/24-hour storm from manure storage facilities that contain manure from those swine, poultry or veal calves.

(6) For a liquid or semisolid manure storage facility, the following minimum freeboard requirements apply and shall be maintained:

(i) For an agricultural operation with over 1,000 AEUs that was a new or expanded operation after January 29, 2000, a minimum 24-inch freeboard, except for enclosed facilities that are not exposed to rainfall, which must have a minimum freeboard of 6 inches.

(ii) For all other facilities, a minimum 12-inch freeboard for manure storage facilities that are ponds, and a minimum 6-inch freeboard for all other manure storage facilities.

(7) The requirements in this section are in addition to and do not replace any more stringent requirements in Chapter 83, Subchapter D (relating to nutrient management).

(b) *Land application of animal manure and agricultural process wastewater; setbacks and buffers.*

(1) The land application of animal manures and agricultural process wastewater requires a permit or approval from the Department unless the operator can demonstrate that the land application meets one of the following:

(i) The land application follows current standards for development and implementation of a plan to manage nutrients for water quality protection, including soil and manure testing and calculation of proper levels and methods of nitrogen and phosphorus application. The Manure Management Manual contains current standards for development and implementation of a plan to manage nutrients for water quality protection which can be used to comply with the requirements in paragraph (1).

(ii) For CAOs, the land application is in accordance with an approved nutrient management plan under Chapter 83, Subchapter D.

(iii) For CAFOs, the land application is in accordance with a CAFO permit as described in § 92.5a (relating to CAFOs).

(2) Unless more stringent requirements are established by statute or regulation, the following agricultural operations may not mechanically land apply manure within 100 feet of surface water, unless a vegetated buffer of at least 35 feet in width is used, to prevent manure runoff into surface water:

(i) A CAO.

(ii) An agricultural operation receiving manure from a CAO directly, or indirectly through a broker or other person.

(iii) An agricultural operation receiving manure from a CAFO directly, or indirectly through a broker or other person.

(3) CAFOs shall meet the setback requirements in § 92.5a(e)(1)(i).

(4) For purposes of paragraph (2) only, "surface water" means a perennial or intermittent stream with a defined bed and bank, a lake or a pond.

(c) *Discharge of pollutants.*

(1) It is unlawful for agricultural operations to discharge pollutants to waters of this Commonwealth except as allowed by regulations or a permit administered by the Department. The Department is authorized to take an enforcement action against any agricultural operation in violation of this requirement.

(2) An operation that has a discharge that is not authorized under the act and that meets the definition of either a medium or small CAFO under 40 CFR 122.23 (relating to concentrated animal feeding operations (applicable to State NPDES programs, see 123.25)) is considered to have an illegal discharge and is subject to enforcement action under the act.

(3) When an agricultural operation is found to be in violation of the act, the Department may require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

**CHAPTER 92. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITTING, MONITORING AND COMPLIANCE**

**GENERAL PROVISIONS**

**§ 92.1. Definitions.**

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

\* \* \* \* \*

*Agricultural process wastewater*—Wastewater from agricultural operations, including from spillage or overflow from livestock or poultry watering systems; washing, cleaning or flushing pens, milkhouses, barns, manure pits; direct contact swimming, washing or spray cooling of livestock or poultry; egg washing; or dust control.

\* \* \* \* \*

*CAFO—Concentrated animal feeding operation*—A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, or any agricultural operation defined as a large CAFO under 40 CFR 122.23 (relating to concentrated animal feeding operations).

*CAO—Concentrated animal operation*—An agricultural operation that meets the criteria established by the State Conservation Commission in regulations under the authority of 3 Pa.C.S. Chapter 5 (relating to nutrient management and odor management) in Chapter 83, Subchapter D (relating to nutrient management).

\* \* \* \* \*

*Livestock*—

(i) Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation. Examples include: dairy cows, beef cattle, goats, sheep, swine and horses.

(ii) The term does not include aquatic species.

\* \* \* \* \*

*Manure*—

(i) Animal excrement, including poultry litter, which is produced at an agricultural operation.

(ii) The term includes materials such as bedding and raw materials which are commingled with that excrement.

\* \* \* \* \*

*Setback*—A specified distance from the top of the bank of surface waters, or potential conduits to surface waters, where manure and agricultural process wastewater may not be land applied. Examples of conduits to surface waters includes, but are not limited to:

(i) Open tile line intake structures.

(ii) Sinkholes.

(iii) Agricultural wellheads.

\* \* \* \* \*

*Vegetated buffer*—A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.

\* \* \* \* \*

**PERMITS**

**§ 92.5a. CAFOs.**

(a) Except as provided in subsections (b)—(d), each CAFO shall have applied for an NPDES permit on the following schedule, and shall have obtained a permit:

(1) By May 18, 2001, for any CAFO in existence on November 18, 2000, with greater than 1,000 AEUs.

(2) By February 28, 2002, for any other CAFO in existence on November 18, 2000.

(3) Prior to beginning operation, for any new or expanded CAFO that began operation after November 18, 2000, and before October 22, 2005.

(b) A poultry operation that is a CAFO, which is in existence on October 22, 2005, and that is not using liquid manure handling systems, shall apply for an NPDES permit no later than the following, and shall obtain a permit:

(1) By April 24, 2006, for operations with 500 or more AEUs.

(2) By January 22, 2007, for all other operations.

(c) After October 22, 2005, a new operation, and an existing operation that will become a CAFO due to changes in operations such as additional animals or loss of land suitable for manure application, shall do the following:

(1) Apply for an NPDES permit at least 180 days before the operation commences or changes.

(2) Obtain an NPDES permit prior to commencing operations or making changes, as applicable.

(d) Other operations not described in subsections (a)—(c) that will become newly regulated as a CAFO for the first time due to the changes in the definition of a CAFO in § 92.1 (relating to definitions) shall apply for a permit by April 24, 2006, and obtain a permit.

(e) The NPDES permit application requirements shall include, but not be limited to, the following:

(1) A nutrient management plan meeting the requirements of Chapter 83, Subchapter D (relating to nutrient management) and approved by the county conservation district or the State Conservation Commission. The plan must include:

(i) Manure application setbacks for the CAFO of at least 100 feet, or vegetated buffers at least 35 feet in width.

(ii) A statement that manure that is stockpiled for 15 consecutive days or longer shall be under cover or otherwise stored to prevent discharge to surface water during a storm event up to and including the appropriate design storm for that type of operation under § 91.36(a)(1) and (5) (relating to pollution control and prevention at agricultural operations).

(2) An erosion and sediment control plan for plowing and tilling operations meeting the requirements of Chapter 102 (relating to erosion and sediment control).

(3) When required under § 91.36(a), a water quality management permit, permit application, approval or engineer's certification, as required.

(4) A preparedness, prevention and contingency plan for pollutants related to the CAFO operation.

(5) A water quality management permit application as required by this chapter and Chapter 91 (relating to general provisions), when treatment facilities that would include a treated wastewater discharge are proposed.

(6) Measures to be taken to prevent discharge to surface water from storage of raw materials such as feed and supplies. These measures may be included in the nutrient management plan.

(f) NPDES permits for each CAFO shall include, but not be limited to, conditions requiring the following:

(1) Compliance with the Nutrient Management Plan, the Preparedness, Prevention and Contingency Plan and the Erosion and Sediment Control Plan for plowing and tilling operations.

(2) A separate NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102 (relating to erosion and sediment control) when applicable.

(3) Compliance with 3 Pa.C.S. §§ 2301—2389 (relating to the Domestic Animal Law).

(4) Compliance with § 91.36.

(5) Recordkeeping and reporting requirements as described in the permit.

(6) When applicable, effluent limitations and other conditions as required under § 92.2a (relating to treatment requirements) to meet water quality standards, for treated wastewater discharges.

(7) Measures needed to be taken to prevent discharge to surface water from storage of raw materials such as feed and supplies, which are not otherwise included in the nutrient management plan.

[Pa.B. Doc. No. 05-1945. Filed for public inspection October 21, 2005, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

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

#### Lake Redesignations

The Environmental Quality Board (Board) amends §§ 93.9e, 93.9f and 93.9m (relating to Drainage List E; Drainage List F; and Drainage List M) to read as set forth in Annex A.

#### A. *Effective Date*

The final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

#### B. *Contact Persons*

For further information, contact Richard Shertzer, Water Quality Assessment and Monitoring Section Chief, Bureau of Water Supply and Facility Regulation, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) website at [www.dep.state.pa.us](http://www.dep.state.pa.us).

#### C. *Statutory Authority*

This final-form rulemaking is made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

#### D. *Background of the Final-Form Rulemaking*

Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The purpose of these amendments is to provide the correct aquatic life use designation in the water quality standards for three Commonwealth lakes. In most cases within Chapter 93 (relating to water quality standards), lakes have been classified according to the aquatic life use designation of their associated streams. In many of

these cases, however, a lake is incapable of supporting the same use as the stream. One example of this is the presence of a lake in a basin designated for Cold Water Fishes (CWF). Because the impounded water is warmed by solar radiation, it is too warm to support fish species indigenous to a cold-water habitat. A lake such as this typically supports a Warm Water Fishery and is managed as such. This normal condition should be recognized in the drainage lists. In some cases, the Fish and Boat Commission (Commission) may stock a warm water lake with trout at certain times of the year to provide a put-and-take recreational fishery. Because trout cannot be supported year round, this is a seasonal fishery use. These lakes should be designated Trout Stocking (TSF) to recognize this seasonal use. For both of these types of lakes, the designated use in the water quality standards should mirror the existing use.

The three lakes included in this rulemaking are:

Blue Marsh Reservoir, Berks County  
Lake Luxembourg, Bucks County  
Walker Lake, Snyder County

The Department's Bureau of Water Supply and Facility Regulation reviewed fishery data on these three lakes from surveys conducted by the Commission, as well as chemical and physical data from a number of sources. A description of the conditions in each lake and the recommended use designations are as follows.

*Blue Marsh Reservoir*—Blue Marsh Reservoir is a multipurpose impoundment owned and operated by the United States Army Corps of Engineers and is located near Reading. The Commission manages this lake as a warm water fishery through natural reproduction of species such as largemouth bass, white and black crappie, bluegill, channel catfish and carp. They also supplement the natural population with stocking of hybrid striped bass and walleye. Physical data indicate that water temperature often exceeds levels tolerated by cold-water fish species. It is recommended that Blue Marsh Reservoir be redesignated from TSF to Warm Water Fishes. All tributaries to the lake will retain their current designations.

*Lake Luxembourg*—Lake Luxembourg is a primary feature in Bucks County's Core Creek County Park. The Commission has determined that this lake supports a warm water fish community that includes naturally reproducing populations of yellow perch, white and black crappie, bluegill and carp. Because the largemouth bass population is suboptimal, fingerlings are stocked. Channel catfish and walleye are stocked to supplement the population. The presence of American eel shows that Lake Luxembourg harbors migratory fishes. Physical data show temperatures inimical to survival of cold-water species. The Commission stocks adult trout in Lake Luxembourg several times each year for angler recreation. The designation of Lake Luxembourg should be changed from CWF, Migratory Fishes (MF) to TSF, MF. Tributaries to the lake will retain their CWF, MF designation.

*Walker Lake*—Walker Lake is owned and managed by the Commission and is located near Troxelville. This lake supports a warm water fishery with reproducing populations of largemouth bass, white and black crappie, yellow perch, bluegill and carp. These species are supplemented by stocking of fingerling northern pike by the Commission. Lake water temperatures often exceed values that can support survival of cold-water fish species. It is recommended that the use designation of Walker Lake be changed from TSF to WWF. Tributaries to the lake will retain their CWF designation.

Section 93.4(b) (relating to Statewide water uses) of the water quality standards requires that less restrictive uses may only be adopted when it is demonstrated that the designated use is more restrictive than the existing use, the use cannot be attained by implementing controls on point and nonpoint sources and one or more of a number of conditions exist. One of those conditions is that dams, diversions or other hydrologic modifications preclude the attainment of the use and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in attainment.

The Department's review of the Commission's fishery data determined that the designated fish and aquatic life use in these three lakes is more restrictive than the existing use in all cases. The warm water conditions and the resulting warm water fish communities are the result of impoundment of the streams. The impounded water is warmed by solar radiation.

All of the lakes are managed primarily as warm water fisheries and provide recreational angling opportunities. Lake Luxembourg is stocked with adult trout by the Commission to provide a seasonal recreational fishery. Blue Marsh Reservoir is operated as a flood control impoundment to reduce the potential for downstream property damage. All of these lakes provide benefits to the citizens of this Commonwealth. In addition, it is not feasible to remove these dams or to operate them in a way that would achieve attainment of the designated use in the impoundment. As a result, the Board amends §§ 93.9e, 93.9f and 93.9m to read as set forth in Annex A.

This final-form rulemaking also corrects a minor error found while preparing the amendments to Drainage List E. During rulemaking for the Regulatory Basics Initiative (RBI), criteria for turbidity were removed from Table 3 in § 93.7 (relating to specific water quality criteria). This was done because turbidity criteria were applied to only 18 surface waters in this Commonwealth. All of these waters are in the Neshaminy Creek basin in Drainage List E. The applicable turbidity criteria were added to Drainage List E during proposed rulemaking published at 28 Pa.B. 4431 (August 29, 1998) and listed as Tur<sub>3</sub> and Tur<sub>4</sub>. The designations were changed to Tur<sub>1</sub> and Tur<sub>2</sub> in the final-form rulemaking published at 30 Pa.B. 6059 (November 18, 2000). The turbidity criterion for the lower segment of Mill Creek, from Watson Creek to Mouth, was not changed between proposed and final rulemaking due to an oversight. It was still listed as Tur<sub>3</sub> but should have been changed to Tur<sub>1</sub>. This error is corrected in Annex A.

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

The Board approved proposed rulemaking for these lake redesignations at its February 17, 2004, meeting. The proposed rulemaking was published at 34 Pa.B. 2067 (April 17, 2004) with provision for a 45-day public comment period that closed on June 1, 2004. No comments were received that related directly to the recommended redesignations.

The United States Environmental Protection Agency (EPA), Region 3 provided comments to the Board regarding data presentation in the lakes report and suggestions for the amendments. The Department worked with the EPA to address its suggestions. As a result, a separate report has been prepared for each lake that presents the lake data and recommendations in a format agreed to by the EPA. The EPA is supportive of these and future lake redesignations to properly designate waters. The recommended redesignations have not changed from the original single report or from the proposed rulemaking.

#### F. *Benefits, Costs and Compliance*

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these changes because they will reflect the appropriate designated use and maintain the most appropriate degree of protection for each lake in accordance with the existing use.

2. *Compliance Costs*—Generally, the amendments should have no fiscal impact on or create additional compliance costs for the Commonwealth or its political subdivisions. No costs will be imposed directly upon local governments by these amendments.

Persons conducting or proposing activities or projects that could impact a lake must comply with the regulatory requirements relating to the designated use. For discharges, treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the lake and many other factors.

3. *Compliance Assistance Plan*—The regulatory revisions have been developed as part of an established program and are consistent with water quality standards requirements established by the Federal Clean Water Act and The Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect designated and existing water uses.

The redesignations will be implemented through the Department's permit and approval actions. For example, the National Pollutant Discharge Elimination System permitting program bases effluent limitations on the use designation of the stream or lake. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanding dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing and revised designated water uses.

4. *Paperwork Requirements*—The amendments should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector. These amendments are based on existing Department regulations.

#### G. *Pollution Prevention*

The water quality standards program is a major pollution prevention tool because the objective is to protect in-stream and in-lake water uses. These designated use changes will ensure protection of the existing use in these lakes.

#### H. *Sunset Review*

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

#### I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 7, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 2067, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing

the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 24, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective August 24, 2005.

#### J. *Findings*

The Board finds that:

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

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

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 34 Pa.B. 2067.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this order.

(5) This final-form rulemaking does not contain standards or requirements that exceed requirements of the companion Federal regulations.

#### K. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9e, 93.9f and 93.9m to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees, as required by the Regulatory Review Act.

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

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

KATHLEEN A. MCGINTY,  
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 5068 (September 10, 2005).)

**Fiscal Note:** Fiscal Note 7-388 remains valid for the final adoption of the subject regulations.

Annex A  
**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Subpart C. PROTECTION OF NATURAL RESOURCES**  
**ARTICLE II. WATER RESOURCES**  
**CHAPTER 93. WATER QUALITY STANDARDS**  
**DESIGNATED WATER USES AND WATER QUALITY CRITERIA**

**§ 93.9e. Drainage List E.**

**Delaware River Basin in Pennsylvania**

***Delaware River***

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * *	*		
3—Mill Creek	Basin, Watson Creek to Mouth	Bucks	WWF, MF	Add Tur <sub>1</sub>
3—Core Creek	Basin, Source to Inlet of Lake Luxembourg	Bucks	CWF, MF	Add Tur <sub>2</sub>
3—Core Creek	Lake Luxembourg	Bucks	TSF, MF	Add Tur <sub>2</sub>
4—Unnamed Tributaries to Lake Luxembourg	Basins, Source to Slackwater of Lake Luxembourg	Bucks	CWF, MF	Add Tur <sub>2</sub>
3—Core Creek	Basin, Lake Luxembourg Dam to Mouth	Bucks	WWF, MF	Add Tur <sub>1</sub>
3—Mill Creek	Basin	Bucks	WWF, MF	Add Tur <sub>1</sub>
	* * * *	*		

**§ 93.9f. Drainage List F.**

**Delaware River Basin in Pennsylvania**

***Schuylkill River***

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * *	*		
3—Bernhart Creek	Basin			
3—Tulpehocken Creek	Basin, Source to T 560 near Ramona	Lebanon	CWF	None
3—Tulpehocken Creek	Main Stem, T 560 to Inlet of Blue Marsh Reservoir	Berks	TSF	None
4—Unnamed Tributaries to Tulpehocken Creek	Basins, T 560 to Inlet of Blue Marsh Reservoir	Berks	TSF	None
4—Owl Creek	Basin	Lebanon	WWF	None
3—Tulpehocken Creek	Blue Marsh Reservoir	Berks	WWF	None
4—Unnamed Tributaries to Blue Marsh Reservoir	Basins, Source to Slackwater of Blue Marsh Reservoir	Berks	TSF	None
4—Northkill Creek	Basin, Source to I-78 Bridge	Berks	EV	None
4—Northkill Creek	Basin, I-78 Bridge to Slackwater of Blue Marsh Reservoir	Berks	CWF	None
4—Licking Creek	Basin, Source to Slackwater of Blue Marsh Reservoir	Berks	TSF	None
4—Spring Creek	Basin, Source to Furnace Creek	Berks	CWF	None
5—Furnace Creek	Basin, Source to Water Authority Dam	Berks	HQ-CWF	None
5—Furnace Creek	Basin, Water Authority Dam to Mouth	Berks	CWF	None
4—Spring Creek	Basin, Furnace Creek to Hospital Creek	Berks	CWF	None
5—Hospital Creek	Basin	Berks	TSF	None



<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
4—Spring Creek	Basin, Hospital Creek to Slackwater of Blue Marsh Reservoir	Berks	TSF	None
3—Tulpehocken Creek	Main Stem, Blue Marsh Reservoir Dam to T 921	Berks	CWF	None
	* * * * *			

§ 93.9m. Drainage List M.

**Susquehanna River Basin in Pennsylvania**

***Susquehanna River***

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions To Specific Criteria</i>
	* * * * *			
4—North Branch Middle Creek	Main Stem, Source to Inlet of Walker Lake	Snyder	TSF	None
5—Unnamed Tributaries to North Branch Middle Creek	Basins, Source to Inlet of Walker Lake	Snyder	CWF	None
4—North Branch Middle Creek	Walker Lake	Snyder	WWF	None
5—Unnamed Tributaries to Walker Lake	Basins, Source to Slackwater of Walker Lake	Snyder	CWF	None
5—Moyers Mill Run	Basin, Source to Slackwater of Walker Lake	Snyder	CWF	None
4—North Branch Middle Creek	Main Stem, Walker Lake Dam to Mouth	Snyder	TSF	None
5—Unnamed Tributaries to North Branch Middle Creek	Basins, Walker Lake Dam to Mouth	Snyder	CWF	None
5—Swift Run	Basin	Snyder	HQ-CWF	None
5—Stony Run	Basin	Snyder	CWF	None
	* * * * *			

[Pa.B. Doc. No. 05-1946. Filed for public inspection October 21, 2005, 9:00 a.m.]

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of Labor and Industry

The Executive Board approved a reorganization of the Department of Labor and Industry effective September 20, 2005.

The organization chart at 35 Pa.B. 5812 (October 22, 2005) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

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

[Pa.B. Doc. No. 05-1947. Filed for public inspection October 21, 2005, 9:00 a.m.]

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of Transportation

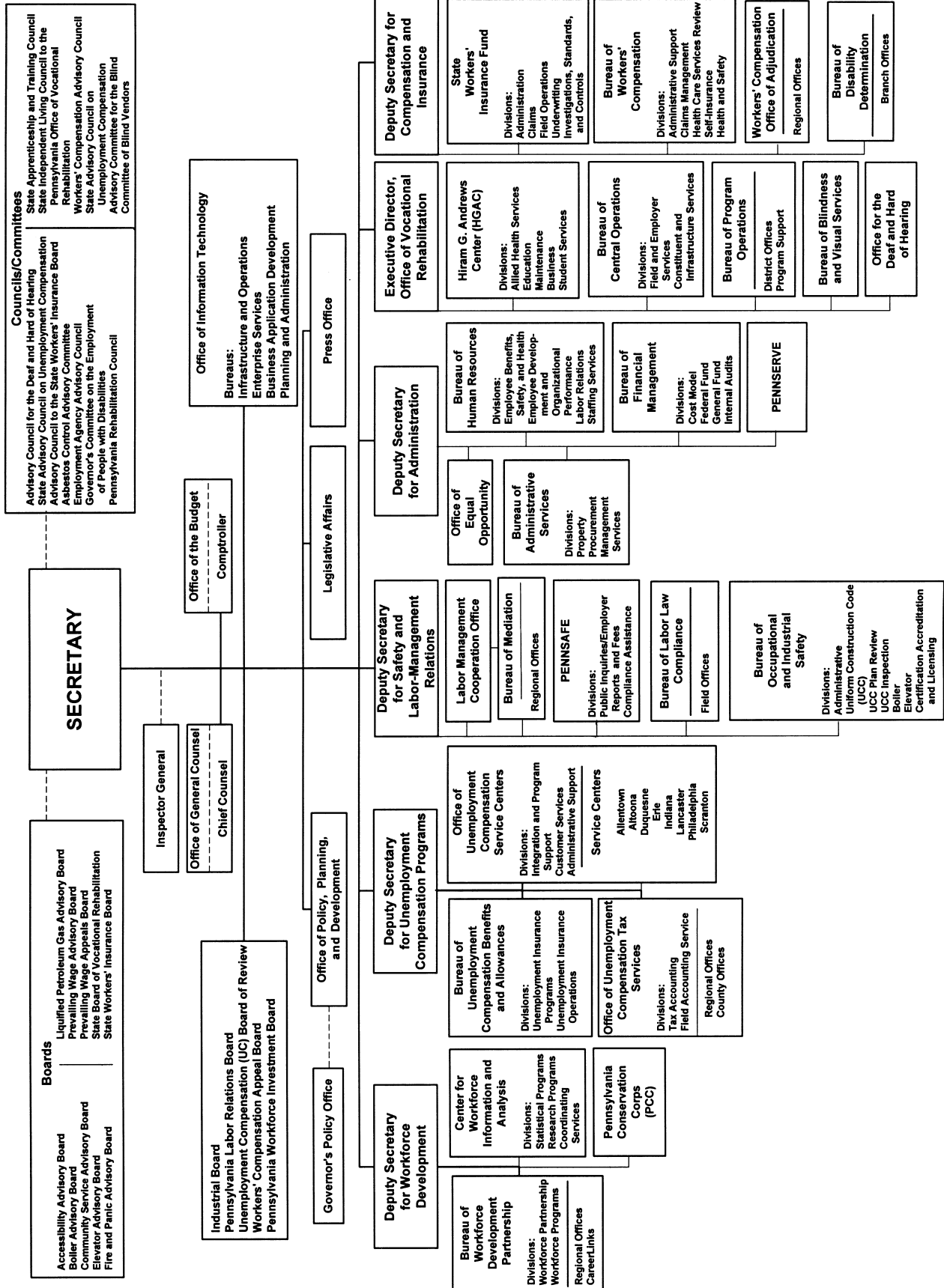
The Executive Board approved a reorganization of the Department of Transportation effective September 20, 2005.

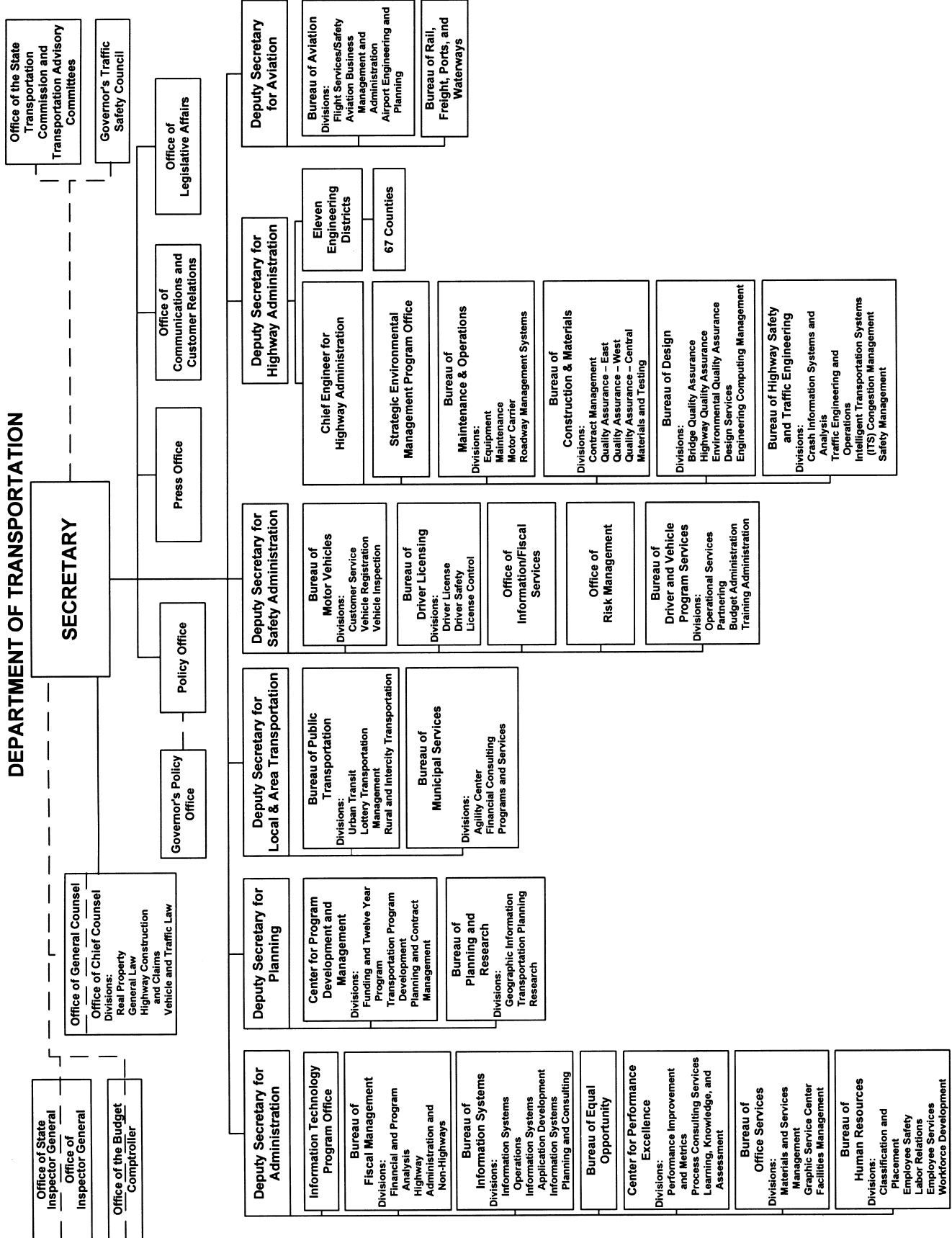
The organization chart at 35 Pa.B. 5813 (October 22, 2005) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

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

[Pa.B. Doc. No. 05-1948. Filed for public inspection October 21, 2005, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY





# NOTICES

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code, has taken the following action on applications received for the week ending October 11, 2005.

#### BANKING INSTITUTIONS

##### New Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-5-05	East River Bank Philadelphia Philadelphia County	4389 Ridge Avenue Philadelphia Philadelphia County	Approved
10-6-05	Pacific Private Bank West Conshohocken Montgomery County	300 Four Falls West Conshohocken Montgomery County	Filed
	<i>Correspondent:</i>		
	David R. Payne, Esq. Stevens & Lee 620 Freedom Business Center P. O. Box 62330 King of Prussia, PA 19406		

##### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-22-05	Community Banks Millersburg Dauphin County	1196 Walnut Bottom Road Carlisle Cumberland County	Opened
10-3-05	Greenville Savings Bank Greenville Mercer County	3302 Wilmington Road New Castle Lawrence County	Opened
10-3-05	York Traditions Bank York York County	2450 Eastern Boulevard York Springettsbury Township York County	Opened
10-3-05	The Legacy Bank Harrisburg Dauphin County	394 South Centre Street Pottsville Schuylkill County	Opened
10-4-05	The Scottdale Bank and Trust Company Scottdale Westmoreland County	Pechin Complex Connellsville Fayette	Filed
10-6-05	Affinity Bank of Pennsylvania Wyomissing Berks County	29 North Sixth Street Reading Berks County	Opened
10-7-05	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Audubon Acme 110 Black Horse Pike Audubon Camden County, NJ	Opened
10-11-05	United Savings Bank Philadelphia Philadelphia County	27-35 East Baltimore Pike Media Delaware County	Filed

**Branch Discontinuances**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-3-05	Standard Bank, PaSB Murrysville Westmoreland County	Redstone Highlands 4951 Cline Hollow Road Murrysville Westmoreland County (Limited Service Facility)	Filed

**SAVINGS INSTITUTIONS**

No activity.

**CREDIT UNIONS**

No activity.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 05-1949. Filed for public inspection October 21, 2005, 9:00 a.m.]

**Maximum Lawful Rate of Interest for Residential Mortgages for the Month of November 2005**

The Department of Banking (Department), under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), has determined that the maximum lawful rate of interest for residential mortgages for the month of November 2005 is 6 3/4%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. No. 96-221). Further preemption was instituted with the signing of Pub. L. No. 96-399, which overrode State interest rate limitations on any individual who finances the sale or exchange of residential real property which the individual owns and which the individual occupies or has occupied as his principal residence.

Each month the Department is required by State law to compute and announce the ceiling rate on residential mortgages in this Commonwealth. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 4.35 to which was added 2.50 percentage points for a total of 6.85 that by law is rounded off to the nearest quarter at 6 3/4%.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 05-1950. Filed for public inspection October 21, 2005, 9:00 a.m.]

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Applications, Actions and Special Notices**

**APPLICATIONS**

**THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT  
APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION  
SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM)  
PERMITS**

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section III	WQM	Industrial, sewage or animal waste; discharge into groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

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

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

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the regional office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for a public hearing on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

### **I. NPDES Renewal Applications**

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0053261 Industrial Waste	Praxair, Inc. P. O. Box 99 90 Commerce Way Stockertown, PA 18083	Stockertown Township Northampton County	01F Bushkill Creek	Y
PA0062537	East Union Township Sewer Authority P. O. Box 245 Sheppton, PA 18248	East Union Township Schuylkill County	Little Tomhicken Creek (5E)	Y
PA0061433 Sewage	Bunker Hill Sewer Company P. O. Box 102 Factoryville, PA 18419	Wyoming County Clinton Township	UNT to South Branch Tunkhannock Creek (4F)	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0083712 (IW)	Bear Valley Joint Authority 218 School House Road P. O. Box 308 St. Thomas, PA 17252-0308	Franklin County St. Thomas Township	Broad Run/13-C	Y
PA0088757 (IW)	Mount Union Municipal Authority 9 West Market Street P. O. Box 90 Mount Union, PA 17066	Huntingdon County Shirley Township	Singers Gap Run/12-C	Y

**NOTICES**

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<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>
PA0024384 (Sew)	North Middleton Authority 240 Clearwater Drive Carlisle, PA 17013-1185	Cumberland County North Middleton Township	Conodoguinet Creek/7-B	Y
PA0084506 (Sew)	David H. Kitch, Jr. Kitch Inc. Starlite Camping Resort 1500 Furnace Hill Road Stevens, PA 17578	Lancaster County Clay Township	Middle Creek/7-J	Y

*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#)</i>	<i>EPA Waived Y/N ?</i>
PA0228176	Harrison Valley Wastewater Treatment Plant 205 East Main Street Harrison Valley, PA 16927	Harrison Township Potter County	Cowanesque River (SWP 4A)	Y
PA0033910	Northeast Bradford School District R. R. 1, Box 211B Rome, PA 18837	Orwell Township Bradford County	Johnson Creek (SWP 4D)	Y
PA0029831 SN	Sullivan County School District P. O. Box 346 Dushore, PA 18614	Sullivan Laporte Borough	UNT of Mill Creek 10B	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>
PA0223042	Farmington Township STP P. O. Box 148 Leeper, PA 16233	Farmington Township Clarion County	Licking Creek 17-B	Y
PA0100048	Spectrum Control, Inc. 8061 Avonia Road Fairview, PA 16415-2899	Fairview Township Erie County	Brandy Run 15	Y

**II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications**

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

**PA0055697, TAD Facilities, Ltd. (Spring Run Estates Sewage Treatment Plant),** 628 Telegraph Road, Coatesville, PA 19320. Wastewater treatment plant is located on Old Telegraph Road, Coatesville, PA 19320. This facility is located in West Caln Township, **Chester County**.

Description of Proposed Activity: This application is for renewal of an NPDES permit to discharge treated sanitary wastewater to West Branch Brandywine Creek.

The receiving stream, West Branch Brandywine Creek, is in the State Water Plan watershed 3H-Brandywine, and is classified for: TSF, aquatic life, water supply and recreation. Brandywine Creek intake and reservoir is approximately 2.5 miles below the discharge point.

The proposed effluent limits for Outfall 001 are based on a design flow of 49,000 gpd.

<i>Parameters</i>	<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow (Record)		
CBOD <sub>5</sub>	25	50
Total Suspended Solids	30	60
NH <sub>3</sub> as N	1.50	3.0
Phosphorus as P	2.0	4.0
Fecal Coliform	200 No./100 ml	
Dissolved Oxygen	5.0 (Min.)	
Total Nitrogen	Mon./Rep.	
pH (STD Unit)	6.0 (Min.)	9.0 (max)



In addition to the effluent limits, the permit contains the following major special conditions:

1. Discharge must not cause nuisance or health hazard.
2. Sludge disposal according to State and Federal regulations.

The EPA waiver is in effect.

**PA0052949**, Industrial Waste, SIC: 4941, **Aqua Pennsylvania, Inc.**, 401 East Gay Street, West Chester, PA 19380. This existing facility is located in Upper Uwchlan Township, **Chester County**.

Description of Proposed Activity: This application is for the renewal of an NPDES permit for an existing discharge of treated filter backwash from the Milford Well Station, which is a potable well water treatment and booster station.

The receiving stream, a UNT to Marsh Creek, is in the State Water Plan watershed 3H and is classified for: HQ, TS, migratory fish, aquatic life, water supply and recreation. Marsh Creek is a tributary to East Branch Brandywine Creek, which flows into Brandywine Creek. The nearest downstream potable water supply intake is Aqua Pennsylvania, Inc. (Ingram's Mill), located approximately 10.5 miles downstream on East Branch Brandywine Creek.

The proposed effluent limits for Outfall 001, based on an average flow of 3,000 gpd are as follows:

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30		60	75
Aluminum, Total	4		8	10
Iron, Total	2		4	5
Manganese, Total	1		2	2.5
Chloroform	Monitor and Report			
Chlorodibromomethane	Monitor and Report			
Dichlorobromomethane	Monitor and Report			
Total Residual Chlorine	0.5			1.3
pH	within limits of 6.0 to 9.0 standard units at all times			

The proposed effluent limits for Outfall 002, based on an average flow of 3,000 gpd are as follows:

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Residual Chlorine	0.05			1.3
pH	within limits of 6.0 to 9.0 standard units at all times			

In addition to the effluent limits, the permit contains the following major special conditions:

1. Notification of Designation of Operator.
2. Remedial Measures if Unsatisfactory Effluent.
3. Discharge to Small Stream.
4. BAT/ELG Reopener.
5. Change of Ownership.
6. Sludge Disposal Requirement.
7. Total Residual Chlorine Requirement.

**PA0031771**, Sewage, SIC 4952, **Westtown Township**, P. O. Box 79, Westtown, PA 19395. This proposed facility is located in Westtown Township, **Chester County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge treated sewage from Westtown-Chester Creek STP.

The receiving stream, East Branch of Chester Creek, is in the State Water Plan watershed 3G and is classified for: TSF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Aqua PA main system is located on Chester Creek 10.4 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.495 mgd.

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>		23		30
(5-1 to 10-31)	15			
(11-1 to 4-30)	25	40		50
TSS	30	45		60
NH <sub>3</sub> -N				
(5-1 to 10-31)	2.5			5.0
(11-1 to 4-30)	7.5			15.0
Fecal Coliform	200/100 ml			1,000/100 ml
Dissolved Oxygen	3.0 (Inst. Min.)			

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Copper	0.022		0.044	0.055
Phosphorus, Total	Monitor and Report			Monitor and Report
pH		6.0 to 9.0 standard units at all times		

In addition to the effluent limits, the permit contains the following major special conditions:

1. Operator Notification.
2. Average Weekly Definition.
3. Remedial Measures if Unsatisfactory Effluent.
4. No Stormwater.
5. Acquire Necessary Property Rights.
6. Change in Ownership.
7. Proper Sludge Disposal.
8. TMDL/WLA Analysis.
9. I-max Limits.
10. Laboratory Certification.

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

**PA0044997**, Sewage, **Mount Pocono Municipal Authority**, 303 Pocono Boulevard, Mount Pocono, PA 18344. This proposed facility is located in Mount Pocono Borough, **Monroe County**.

Description of Proposed Activity: Renewal of existing NPDES Permit, Mount Pocono Borough and Proposed Sanofi Pasteur Combined Effluent.

The receiving stream, Forest Hills Run, is in the State Water Plan watershed No. 1E and is classified for: HQ, CWF. The nearest downstream public water supply intake for Stroudsburg Borough is located on Brodhead Creek 14 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.60 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10.0	15.0	20.0
Total Suspended Solids	30.0	45.0	60.0
NH <sub>3</sub> -N			
(5-1 to 10-31)	2.70		5.40
(11-1 to 4-30)	8.10		16.20
Phosphorus as "P"	1.0		2.0
Dissolved Oxygen	minimum of 7.0 mg/l at all times.		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times.		
Total Residual Chlorine	.19		.44
NO <sub>2</sub> = NO <sub>3</sub> as "N"	13.80		27.60
Total Copper	Monitor and Report		
Total Lead	Monitor and Report		
Total Zinc	Monitor and Report		
Temperature			
(January 1-31)	41.0°F		
(February 1-29)	41.5°F		
(March 1-31)	45.2°F		
(April 1-15)	63.0°F		
(April 16-30)	66.2°F		
(May 1-15)	63.5°F		
(May 16-30)	73.8°F		
(June 1-15)	68.2°F		
(June 16-30)	76.0°F		
(July 1-31)	73.5°F		
(August 1-15)	72.0°F		
(August 16-31)	72.0°F		
(September 1-15)	68.4°F		
(September 16-30)	62.2°F		
(October 1-15)	55.2°F		
(October 16-31)	50.8°F		

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
(November 1-15)			48.7°F
(November 16-30)			46.9°F
(December 1-31)			42.8°F

The proposed effluent limits for Outfall 001 based on a design flow of .99 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10.0	15.0	20.0
Total Suspended Solids	30.0	45.0	60.0
NH <sub>3</sub> -N			
(5-1 to 10-31)	2.40		4.80
(11-1 to 4-30)	7.20		14.40
Phosphorus as "P"	1.0		2.0
Dissolved Oxygen	minimum of 7.0 mg/l at all times.		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times.		
Total Residual Chlorine	.12		.28
NO <sub>2</sub> = NO <sub>3</sub> as "N"	12.10		24.20
Total Copper	Monitor and Report		
Total Lead	Monitor and Report		
Total Zinc	Monitor and Report		
Temperature			
(January 1-31)			40.4°F
(February 1-29)			40.9°F
(March 1-31)			44.0°F
(April 1-15)			57.1°F
(April 16-30)			60.6°F
(May 1-15)			59.8°F
(May 16-30)			67.6°F
(June 1-15)			65.0°F
(June 16-30)			71.3°F
(July 1-31)			70.6°F
(August 1-15)			69.6°F
(August 16-31)			69.6°F
(September 1-15)			66.7°F
(September 16-30)			61.3°F
(October 1-15)			54.7°F
(October 16-31)			50.5°F
(November 1-15)			48.4°F
(November 16-30)			46.6°F
(December 1-31)			42.4°F

**PA0060372**, Sewage, **Factoryville Borough**, 163 College Avenue, P. O. Box 277, Factoryville, PA 18419. This proposed facility is located in Clinton Township, **Wyoming County**.

The receiving stream, South Branch Tunkhannock Creek, is in the State Water Plan watershed No. 4F and is classified for TSF. The nearest downstream public water supply intake for Danville Borough Water Authority is located on the Susquehanna River and is over 50 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.086 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25.0	40.0	50.0
Total Suspended Solids	30.0	45.0	60.0
Dissolved Oxygen	minimum of 5.0 mg/l at all times.		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times.		
Total Residual Chlorine	1.0		3.3
Total Nitrogen	Monitor and Report		
Total Phosphorus	Monitor and Report		

The proposed effluent limits for Outfall 001 based on a design flow of 0.185 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25.0	40.0	50.0
Total Suspended Solids	30.0	45.0	60.0
Dissolved Oxygen	minimum of 5.0 mg/l at all times.		
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times.		
Total Residual Chlorine	1.0		3.3
Total Nitrogen	9,741 lbs./year as an annual loading		
Total Phosphorus	1,218 lbs./year as an annual loading		

**PA0065048**, Sewage, **Nicholson Borough Water Authority**, P. O. Box 324, Nicholson, PA 18446. This proposed facility is located in Nicholson Borough, **Wyoming County**.

Description of Proposed Activity: permit application to discharge treated domestic wastewater.

The receiving stream, Tunkhannock Creek, is in the State Water Plan watershed No. 4F and is classified for: CWF.

The nearest downstream public water supply intake for Danville Borough Water Company is located on Susquehanna River 90 river miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.09 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
Dissolved Oxygen	minimum of 3.0 mg/l at all times.		
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times.		
Total Residual Chlorine	1.0		2.34

Chesapeake Bay Nutrient Program Effluent limits for Outfall 001

<i>Parameter</i>	<i>Mass Units (lbs) Monthly</i>	<i>Mass Units (lbs) Annual</i>	<i>Concentration (mg/l) Average Monthly</i>
Ammonia-N	Report		Report
Kjeldahl-N	Report		Report
Nitrate-Nitrite-N	Report		Report
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report

**PA0063304**, Industrial, **Blythe Township Municipal Authority**, 375 Valley Street, New Philadelphia, PA 17959. This proposed facility is located in Cass Township, **Schuylkill County**.

Description of Proposed Activity: application to renew an existing NPDES permit.

The receiving stream, Crystal Run, is in the State Water Plan watershed No. 3A and is classified for: CWF, water supply, aquatic life and recreation. The nearest downstream public water supply intake for Pottstown Borough Water Authority is located on the Schuylkill river approximately 60 river miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.04 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>
Total Suspended Solids	30.0	60.0		
Total Iron	2.0	4.0		
Total Aluminum	4.0	8.0		
Total Manganese	1.0	2.0		
pH			6.0 to 9.0 at all times	

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

**PA0027405**, Sewage, **Ephrata Borough Authority**, 124 South State Street, Ephrata, PA 17522. This facility is located in Ephrata Borough, **Lancaster County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Cocalico Creek, is in Watershed 7-J, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Lancaster Municipal Water Authority is located on the Conestoga River, approximately 16 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 3.8 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	3		6
(11-1 to 4-30)	9		18
NO <sub>2</sub> -N	Monitor		
NO <sub>3</sub> -N	Monitor		
TKN	Monitor		
Total Nitrogen		79,049 lbs per year as Total Annual	
Total Phosphorus		9,881 lbs per year as Total Annual	
Total Phosphorus	2		4
Total Residual Chlorine	0.35		1.1
Dissolved Oxygen		minimum of 5.0 at all times	
pH		from 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		4,600/100 ml as a geometric average	

The cap loads may be met in part or in full by obtaining offsets or credits approved by the Department of Environmental Protection (Department).

Persons may make an appointment to review the Department's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is not in effect.

**PA0009458**, Industrial Waste, SIC Code 3231, **PPG Industries, Inc.**, P. O. Box 307, Tipton, PA 16684-0307. This facility is located in Antis Township, **Blair County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated industrial waste.

The receiving stream, Little Juniata River, is in Watershed 11-A, and classified for TS, water supply, recreation and fish consumption. The nearest downstream public water supply intake is Newport Borough Water Authority located on the Juniata River, approximately 111 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 based on a design flow of 0.194 mgd are:

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
pH					from 6.0 to 9.0 inclusive
Oil and Grease	16	16			18
Total Suspended Solids	30	49			34
Temperature				Monitor and Report	

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

**PA0041581**, Sewage, **Liverpool Municipal Authority**, P. O. Box 357, Liverpool, PA 17045. This facility is located in Liverpool Borough, **Perry County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Susquehanna River, is in Watershed 6-C, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for United Water Company is located on the Susquehanna River, approximately 23 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.175 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Residual Chlorine	1.5		2.5
Dissolved Oxygen		minimum of 5.0 at all times	
pH		from 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		100,000/100 ml as a geometric average	

In addition to the effluent limits, the permit contains the following major special conditions: monitor and report requirements for annual loadings of Total Phosphorus and Total Nitrogen.

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

**PA0044741**, Industrial Waste and Stormwater, SIC Code 2033, **Hanover Foods Corporation**, 1486 York Street, P. O. Box 334, Hanover, PA 17331-0334. This facility is located in Penn Township, **York County**.

Description of activity: The application is for the renewal of an NPDES permit for existing discharges of industrial wastewater, noncontact cooling water (NCCW) and stormwater.

The receiving stream, Oil Creek, is in Watershed 7-H and is classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake, Wrightsville Water Supply Company, is located approximately 40 miles downstream on the Susquehanna River. The discharge is not expected to affect the water supply.

The proposed final effluent limitations and monitoring requirements for Outfall 001 (industrial waste and NCCW) based on a projected flow of 0.643 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH (S.U.)		from 6.0 to 9.0 inclusive	
Dissolved Oxygen		minimum of 5.0 mg/l at all times	
Total Residual Chlorine	0.22	Monitor and Report	0.73
Temperature (°F)		*	110
CBOD <sub>5</sub>			
(5-1 to 10-31)	15	30	37
(11-1 to 4-30)	25	50	62
NH <sub>3</sub> -N			
(5-1 to 10-31)	1.2	2.4	3.0
(11-1 to 4-30)	3.6	7.2	9.0
Total Suspended Solids	30	60	75
Total Phosphorus	2.0		4.0
Fecal Coliform			
(5-1 to 9-30)	200		
(10-1 to 4-30)	2,400		
Total Kjeldahl Nitrogen	Monitor and Report		
NO <sub>3</sub> -N + NO <sub>2</sub> -N	Monitor and Report		
Total Nitrogen	Monitor and Report		
Oil and Grease		Monitor and Report	
Total Copper		Monitor and Report	

\* Temperature shall be limited on a maximum daily basis to: Jan. 1-31—51°F, Feb. 1-29—53°F, Mar. 1-31—57°F, Apr. 1-15—64°F, Apr. 16-30—91°F, May 1-15—87°F, May 16-31—110°F, Jun. 1-15—110°F, Jun. 16-30—110°F, Jul. 1-31—110°F, Aug. 1-15—110°F, Aug. 16-31—110°F, Sep. 1-15—110°F, Sep. 16-30—105°F, Oct. 1-15—92°F, Oct. 16-31—71 °F, Nov. 1-15—66°F, Nov. 16-30—61.0°F, Dec. 1-31—55°F.

Three stormwater outfalls (002—004) are identified in the permit, with proposed annual monitoring requirements for pH, BOD<sub>5</sub>, COD, Oil and Grease, Total Suspended Solids, Total Dissolved Solids, Total Nitrogen, Total Phosphorus and Total Iron.

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

**PA0086185**, Sewage, **Washington Township Authority**, 185 Manor Road, Elizabethville, PA 17023. This facility is located in Washington Township, **Dauphin County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Wiconisco Creek, is in Watershed 6-C, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for United Water Company is located on the Susquehanna River, approximately 45 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.05 mgd are:

<i>Parameter</i>	<i>Average Monthly (lbs/day)</i>	<i>Average Weekly (lbs/day)</i>	<i>Total Monthly (lbs/mo)</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10.4	16.6		25	40	50
Total Suspended Solids	12.5	18.7		30	45	60
Total Phosphorus				Monitor and Report	Monitor and Report	
Total Kjeldahl Nitrogen				Monitor and Report	Monitor and Report	
Nitrite-Nitrate Nitrogen				Monitor and Report	Monitor and Report	
Total Nitrogen				Monitor and Report	Monitor and Report	
Dissolved Oxygen				minimum of 5.0 at all times		
pH				from 6.0 to 9.0 inclusive		
Fecal Coliform (5-1 to 9-30)			200/100 ml as a geometric average			
(10-1 to 4-30)			100,000/100 ml as a geometric average			

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

**PA0247855**, Sewage, **Belfast Township Supervisors**, 121 Homestead Lane, Needmore, PA 17238. This facility is located in Belfast Township, **Fulton County**.

Description of activity: The application is for issuance of an NPDES permit for new discharge of treated sewage.

The receiving stream, Tonoloway Creek, is in Watershed 13-B, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for the R. C. Wilson Water Treatment Plant near Williamsport, MD is located on the Potomac River, approximately 30 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.030 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NO <sub>2</sub> -N + NO <sub>3</sub> -N		Monitor and Report	
Total Kjeldahl Nitrogen		Monitor and Report	
Total Phosphorus		Monitor and Report	
Total Residual Chlorine	0.5		1.6
Dissolved Oxygen		minimum of 5.0 at all times	
pH		from 6.0 to 9.0 inclusive	
Fecal Coliform (5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		49,000/100 ml as a geometric average	

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

**PA0088633**, Sewage, **Lower Paxton Township Authority (Beaver Creek Wet Weather WWTF)**, 425 Prince Street, Harrisburg, PA 17109. This facility is located in South Hanover Township, **Dauphin County**.

Description of activity: The application is for issuance of an NPDES permit for a new discharge of treated sewage.

The receiving stream, Beaver Creek, is in Watershed 7-D, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Middletown Borough located on the Swatara Creek, approximately 10 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 2.5 mgd (12 mdg peak) are:

<i>Parameter</i>	<i>Average Monthly (lbs/day)</i>	<i>Average Weekly (lbs/day)</i>	<i>Total Monthly (lbs/mo)</i>	<i>Total Annual (lbs/year)</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	312	500			15	24	30
Total Suspended Solids	625	938			30	45	60

<i>Parameter</i>	<i>Average Monthly (lbs/day)</i>	<i>Average Weekly (lbs/day)</i>	<i>Total Monthly (lbs/mo)</i>	<i>Total Annual (lbs/year)</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
NH <sub>3</sub> -N (5-1 to 10-31)	62		Monitor and Report		3.0		9.0
(11-1 to 4-30)	187				9.0		18
Total Phosphorus	41		Monitor and Report	1,106	2.0		4.0
Total Kjeldahl Nitrogen			Monitor and Report		Monitor and Report		
Nitrite-Nitrate Nitrogen			Monitor and Report		Monitor and Report		
Total Nitrogen			Monitor and Report	8,855	Monitor and Report		
Dissolved Oxygen			minimum of 5.0 at all times				
pH			from 6.0 to 9.0 inclusive				
Fecal Coliform (5-1 to 9-30)			200/100 ml as a geometric average				
(10-1 to 4-30)			2,800/100 ml as a geometric average				

In addition to the effluent limits, the permit contains the following major special conditions:

1. Conditions for discharge to occur.
2. Monitoring Requirements and Conditions for Stormwater Outfalls.

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is not in effect.

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

**PAS314801**, Industrial Waste, SIC 4922, **Dominion Transmission**, R. R. 3, Box 24-T, Westfield, PA 16950-9624. This existing facility is located in Clymer Township, **Tioga County**.

Description of Proposed Activity: The applicant proposes the issuance of a stormwater permit, that will authorize the discharge of stormwater from a retention pond and from the retention pond's underdrain system.

The receiving stream, Mill Creek, is in the State Water Plan watershed 4A and is classified for TSFs. The nearest downstream public water supply is the PA-NY border located on the Cowanesque River 30.5 river miles below the point of discharge.

The monitoring for Outfall 001 and Outfall 002 will be:

<i>Parameter</i>	<i>Daily Maximum (µg/L)</i>	<i>Measurement Frequency</i>	<i>Sample Type</i>
benzene	Report	1/Month	Grab
ethylbenzene	Report	1/Month	Grab
toluene	Report	1/Month	Grab
total xylenes	Report	1/Month	Grab
cumene	Report	1/Month	Grab
naphthalene	Report	1/Month	Grab
MTBE	Report	1/Month	Grab
n-butylbenzene	Report	1/Month	Grab
sec-butylbenzene	Report	1/Month	Grab
isopropyltoluene	Report	1/Month	Grab
methylene chloride	Report	1/Month	Grab
n-propylbenzene	Report	1/Month	Grab
1,2,4-trimethylbenzene	Report	1/Month	Grab
1,3,5-trimethylbenzene	Report	1/Month	Grab

In addition to the proposed monitoring or inspection, the permit contains the following major special conditions:

1. Requirements Applicable to Stormwater Outfalls.
2. Sampling Impoundment Contents.

**PAS804806**, Industrial Waste, SIC 7542, **Davidson Brothers, Inc.**, 450 Runville Road, Bellefonte, PA 16823. This existing facility is located in Boggs Township, **Centre County**.

Description of Proposed Activity: Truck washing facility is seeking a stormwater discharge permit.

The receiving stream, Wallace Run, is in the State Water Plan watershed 9C and is classified for HQ-CWF. The nearest downstream public water supply intake for the Pennsylvania-American Water Company at Milton, PA is located on the West Branch Susquehanna River 83 miles below the discharge.



The Permittee must comply with one of the two following options: (1) the permittee must perform annual inspections of the facility in lieu of monitoring and submit annual inspection reports in accordance with the stormwater special condition; or (2) the permittee must monitor and report monitoring results for the water quality parameters listed below in accordance with the stormwater special condition.

In addition to the effluent limits, the permit contains the following major special conditions: requirements applicable to stormwater outfalls.

**PA0028631**, Sewerage 4952, **Mid-Cameron Authority**, 421 North Broad Street, Emporium, PA 15834. The existing facility is located in the Shippen Township, **Cameron County**.

Description of Proposed Activity: The applicant wishes to amend the existing permit in lieu of treatment upgrades that are proposed for the facility. The proposed NPDES amendment will contain one discharge of treated sewage wastewater which will be blended with treated combined sewage overflow when necessary. The combined sewage overflow was previously untreated. The amendment also proposes an increase of flow capacity. There will be no change to the existing limits at the facility.

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

**PA0217085**, Industrial Waste, SIC, 3312, **Gautier Steel, Ltd.**, 80 Clinton Street, Johnstown, PA 15901. This application is for renewal of an NPDES permit to discharge process wastewater, untreated noncontact cooling water, stormwater and groundwater from its Johnstown facility in the City of Johnstown, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters of Little Conemaugh River and the Conemaugh River both classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Buffalo Township Municipal Authority located in Freepport 80 miles below the discharge point.

*Outfall 003: existing discharge, average flow of 0.09 mgd.*

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature (°F)					110
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

*Outfall 004: existing discharge, average flow of 0.03 mgd*

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature (°F)					110
pH	not less than 6.0 nor greater than 9.0				

*Outfall 014: existing discharge, average flow of 0.06 mgd*

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature (°F)					110
*Total Suspended Solids	134.8	359.1	15	40	
*Oil and Grease		89.9		10	
pH	not less than 6.0 nor greater than 9.0				

Other Conditions: Outfall 014 also discharges emergency overflow for 12-inch mill pumping station.

\*The limits only apply when there is an emergency overflow discharge.

*Outfall 001: existing discharge, flow of varied mgd*

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
*Flow	Monitor and Report				
*Total Suspended Solids	134.8	359.1	15	40	

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
*Oil and Grease		89.9		10	
*pH	not less than 6.0 nor greater than 9.0				

This outfall receives and discharges emergency overflow from 9"-2 and 14" mill pumping station and stormwater/groundwater.

\*The limits only apply when there is an emergency overflow discharge.

Outfalls 002, 005—013 and 015—019: existing discharge, design flow of varied mgd

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
The discharge from these outfalls shall consist of uncontaminated stormwater runoff and groundwater.					

Outfall 303: existing discharge, design flow of varied mgd

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
*Flow	Monitor and Report				
*Total Suspended Solids	134.8	359.1	15	40	
*Oil and Grease		89.9		10	
*pH	not less than 6.0 nor greater than 9.0				

This outfall receives and discharges overflow for wastewater treatment plant No. 334 pumping station and scale pit.

\*The limits only apply when there is an emergency overflow discharge.

Outfall 334/304: existing discharge, average flow of 0.74 mgd

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	Monitor and Report				
Total Suspended Solids	134.8	359.1	15	40	
Oil and Grease		89.9		10	
pH	not less than 6.0 nor greater than 9.0				

**PA0092878, Sewage, Trader's Path Homes, Inc.,** 100 Lorraine Drive, Lower Burrell, PA 15068. This application is for renewal of an NPDES permit to discharge treated sewage from Trader's Path Homes STP in Lower Burrell City, **Westmoreland County.**

The following effluent limitations are proposed for discharge to the receiving waters, known as Chartiers Run, which are classified as a TSF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Brackenridge Municipal Water Works.

Outfall 001: existing discharge, design flow of 0.025 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	6.0			12.0
(11-1 to 4-30)	18.0			36.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 as a geometric mean			
Total Residual Chlorine	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

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

**PA0239607**, Sewage, **James Kapp—Rocky River Development**, 8100 Ohio River Blvd., Pittsburgh, PA 15202. This proposed facility is located in Perry Township, **Clarion County**.

Description of Proposed Activity: New discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply, considered during the evaluation is the Western PA American Water—Kittanning District is located on the Allegheny River and is approximately 35 miles below point of discharge.

The receiving stream, a UNT to the Allegheny River, is in watershed 17-B and classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0052 mgd.

Parameter	Concentrations		
	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow			
CBOD <sub>5</sub>	10		20
Total Suspended Solids	10		20
Fecal Coliform			
(5-1 to 9-30)	200/100 ml		1,000/100 ml
(10-1 to 4-30)	2,000/100 ml		10,000/100 ml
pH	6.0 to 9.0 standard units at all times		

The EPA waiver is in effect.

### III. WQM Industrial Waste and Sewerage Applications Under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

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

**WQM Permit No. 3696408 Amendment 05-1**, Sewerage, **Lancaster Area Sewer Authority**, 130 Centerville Road, Lancaster, PA 17603. This proposed facility is located in Manor Township, **Lancaster County**.

Description of Proposed Action/Activity: Upgrade of an Aeration System.

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

**WQM Permit No. 6505403**, Sewerage, **Rodney Jeannette**, 1249 Valleyview Road, Lawrence, PA 15055. This proposed facility is located in Cecil Township, **Washington County**.

Description of Proposed Action/Activity: Application for the construction and operation of a small-flow, single-residence, sewage treatment plant.

**WQM Permit No. 6305404**, Sewerage, **Washington-East Washington Joint Authority**, 60 East Beau Street, Washington, PA 15301. This proposed facility is located in Cecil Township, **Washington County**.

Description of Proposed Action/Activity: Application for the relocation of existing 14-inch force main outside of excavation areas.

### IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

### V. Applications for NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

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

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

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI011505075	Southdown Properties, Inc. 201 South Caln Road Development 55 Country Club Drive Suite 200 Downingtown, PA 19335	Chester	Caln Township	UNT Valley Creek (CWF, MF)

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011505076	Gregory Weir Weir Residence Development 1115 Yorkshire Way West Chester, PA 19382	Chester	West Vincent Township	Tributary to Beaver Run (HQ, TSF, MF)
PAI011505077	Downingtown Area School District Shamona Creek Elementary School 126 Wallace Avenue Downingtown, PA 19335	Chester	Uwchlan Township	Shamona and Brandywine Creeks (HQ, TSF, MF)
PAI011505078	Lionville Commercial, LLC Old Village Plaza Development 797 East Lancaster Avenue Suite 17 Downingtown, PA 19335	Chester	Uwchlan Township	Pickering Creek (HQ, TSF) West Valley Creek (CWF, MF)

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

*Schuylkill County Conservation District: 1206 Ag. Center Dr., R. R. 5, Box 5810, Pottsville, PA 17901, (570) 622-3742.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025405003	Stanley Frompovich, Jr. 71 Jefferson Lane Auburn, PA 17922	Schuylkill	East Union Township	Rattling Run HQ-CWF

*Northampton County Conservation District: Greystone Bldg., Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS10U137R	Techo-Bloc Attn: Michael Nadeau 852 Pennsylvania Ave. Pen Argyl, PA 18072	Northampton	Plainfield Township	Bushkill Creek HQ-CWF

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI033104002	Bonney Forge Inc. P. O. Box 330 Mount Union, PA 17066-0330	Huntingdon	Shirley Township	UNT Juniata River HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI053205001	Arthur F. Grguric Blacklegs Creek Watershed Assoc. P. O. Box 59 Clarksburg, PA 15725	Indiana	Conemaugh Township	Big Run Creek CWF

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

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PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

## PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

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

The permit application and any related documents are on file at the office listed before the application and are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

### SAFE DRINKING WATER

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

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

**Permit No. 4005505**, Public Water Supply

Applicant	<b>Aqua Pennsylvania, Inc.</b> 50 East Woodhaven Drive White Haven, PA 18661
Township or Borough	Harveys Lake Borough
County	<b>Luzerne</b>
Responsible Official	David R. Quinn
Type of Facility	Public Water System
Consulting Engineer	CET Engineering Services 1240 North Mountain Road Harrisburg, PA
Application Received Date	October 5, 2005
Description of Action	The construction of a new well house and a storage tank at the Rhoades Terrace site.

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

**Permit No. 5505501**, Public Water Supply.

Applicant	<b>Department of General Services</b> Selinsgrove Center
Township or Borough	Penn Township
County	<b>Snyder</b>
Responsible Official	Ronald Blauch, Project Coordinator Department of General Services Selinsgrove Center 18th and Herr Streets Bureau of Engineering & Architecture Harrisburg, PA 17125
Type of Facility	Public Water Supply—Construction
Consulting Engineer	Thomas F. Beach, P. E. Remington, Vernick & Beach Engineers 922 Fayette Street Conshohocken, PA 19428
Application Received Date	October 6, 2005
Description of Action	Construct a water filtration system.

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

**Permit No. 2605505**, Public Water Supply.

Applicant	<b>Indian Creek Valley Water Authority,</b> P. O. Box 486 2068 Indian Head Road Indian Head, PA 15446
Township or Borough	Saltlick Township
Responsible Official	R. Kerry Witt, Manager Indian Creek Valley Water Authority P. O. Box 486 2068 Indian Head Road Indian Head, PA 15446
Type of Facility	Water treatment plant
Consulting Engineer	Bankson Engineers, Inc. 267 Blue Run Road Indianola, PA 15051
Application Received Date	September 16, 2005
Description of Action	Installation of a packaged water treatment plant to remove iron and manganese from the existing supply of well water by means of aeration, detention and filtration. This will include the addition of potassium permanganate. This project also involves the relocation of all facilities from the existing building to the new building including chlorination.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

### PREAMBLE 1

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

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Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the Background Standard, Statewide Health Standard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

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

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

**Wyeth-Marietta**, East Donegal Township, **Lancaster County**. Malcolm Pirnie, Inc., 824 Market Street, Suite 820, Wilmington, DE 19801, on behalf of GlaxoSmith-Kline, 2200 Renaissance Boulevard, Suite 105, King of Prussia, PA 19406 and Wyeth, Five Giralda Farms, Madison, NJ 07940, submitted a Notice of Intent to Remediate potential groundwater and soil contamination. The applicants intend to document remediation of the site to the Site Specific Standard. Current and future use of the site will be pharmaceutical manufacturing.

**James and Tamah Wicke Residence**, Silver Spring Township, **Cumberland County**. Alliance Environmental Services, Inc., 1820 Linglestown Road, Harrisburg, PA 17110, on behalf of James and Tamah Wicke, 83 Willow Mill Park Road, Mechanicsburg, PA 17050, submitted a Notice of Intent to Remediate site soils and groundwater contamination of No. 2 fuel oil. The applicant intends to document remediation of the site to the Statewide Health Standard. Future use of the site will be residential.

**Gladys Horner Property**, East Saint Clair Township, **Bedford County**. Environmental Products and Services of Vermont, Inc., 5100 Paxton Street, Harrisburg, PA 17111, on behalf of Gladys Horner, 7720 Thor Drive, Annandale, VA 22003-1432 submitted a Notice of Intent to Remediate site soils contaminated with No. 2 fuel oil. The applicant intends to document remediation of the site to the Statewide Health Standard. Future use of the site will be residential.

*Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**National Torch Tips Former**, O'Hara Township, **Allegheny County**. Michelle E. Harrison, React Environmental Services, Inc., 6901 Kingsessing Avenue, Philadelphia, PA 19142 (on behalf of Peter Sukernek, Howard Hanna Company, Koppers Building, Pittsburgh, PA 15219, and Jonathan Kamin, 50 Freeport Partners, 101 Freeport Road, Pittsburgh, PA 15215) has submitted a Notice of Intent to Remediate soil and groundwater contaminated with chlorinated solvents TCE, PCE, CIS-DICHLOROETHYLENE. The site was originally constructed as a welding torch facility and also operated as a gasoline service station. Proposed remediation includes use of engineering and institutional controls to attain a nonresidential Site-Specific Standard. Proposed future use of the site is as a one story retail shopping center.

**Fair Oaks Site**, Leet Township, **Allegheny County**. Mary A. King, P. G., Civil & Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh, PA 15205 (on behalf of Robertson-Ceco Corporation, Suite 425, 5000 Executive Parkway, San Ramon, CA 94583) has submitted a Notice of Intent to Remediate soil and groundwater contaminated with lead, heavy metals, solvents and PAHs. The applicant proposes to remediate the site to meet the Statewide Health and Background Standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *Beaver County Times/Allegheny Times* on August 19, 2005.

**J. Allan Site**, City of Pittsburgh, **Allegheny County**. Scott Rasmussen, Civil & Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh, PA 15205 on behalf of Joe Popchak, Urban Redevelopment Authority, 200 Ross Street, Pittsburgh, PA 15219 has submitted a Notice of Intent to Remediate site soils and groundwater contaminated with VOCs, semivolatile organic compounds and metals. The site was formerly used for warehousing and distribution of steel beam and plate stock. Proposed

remediation includes the use of institutional and engineering controls to eliminate exposure to potential receptors by pathway elimination. Proposed future use of the property will be nonresidential.

**First Commonwealth Bank**, Borough of Ebensburg, **Cambria County**. Heather W. Gawne, CORE Environmental Services, Inc., 4068 Mount Royal Boulevard, Suite 225 Gamma Bldg., Allison Park, PA 15101 on behalf of Don Verobish, First Commonwealth Professional Resources, Inc., Route 220 and North Juniata Street, Hollidaysburg, PA 16648 has submitted a Notice of Intent to Remediate site soils and groundwater contaminated with analytes of leaded and unleaded gasoline that is, benzene, toluene, ethylbenzene, xylenes, methyl tertiary-butyl ether, and 1,2-ethylene dibromide. Attainment of a Site-Specific Standard by elimination of exposure pathways is the proposed remediation for this former gasoline service station. Proposed future use of the property is non-residential and is presently a First Commonwealth branch office.

**Franklin Mills Site**, Borough of Franklin, **Cambria County**. Mark Urbassik, KU Resources, Inc., 22 South Linden Street, Duquesne, PA 15110 on behalf of John Toth, EMF Development Corp., 365 Bassett Road, Hooversville, PA 15936 and Richard McNulty, Borough of Franklin, 1125 Main Street, Johnstown, PA 15909 has submitted a Notice of Intent to Remediate site soil and groundwater contaminated with oils, solvents, lead, acids and PCBs. All previous structures have been demolished and removed; no further remediation is proposed. Proposed future use of the site is either commercial or industrial.

**Groveton Reducing Station-Columbia Gas**, Robinson Township, **Allegheny County**. Brian E. Steffes, P.G., Michael Baker Jr., Inc., 100 Airside Drive, Moon Township, PA 15108 on behalf of Marc B. Okin, Columbia Gas of Pennsylvania, 501 Technology Drive, 3rd Floor, Canonsburg, PA 15317 has submitted a Notice of Intent to Remediate site soils contaminated with benzene, PCBs, lead and arsenic. Remediation will include excavation and off-site disposal of contaminated soils. Proposed future use of the site is continued use as a reducing station for the pipeline.

**Carbon Resources, Inc./Gateway Forest Products Site**, Morgan Township, **Greene County**. Scott Whipkey, R. A. R. Engineering Group, Inc., 1135 Butler Avenue, New Castle, PA 16101 on behalf of Steven Stout, Carbon Resources, Inc., P. O. Box 1512, McMurray, PA 15317 has submitted a Notice of Intent to Remediate site soils contaminated with PAHs, creosote and petroleum. Remediation included removal of drummed waste and excavation and removal of contaminated soils.

**Frankstown Sterrett Plan of Lots, Lot No. 2**, City of Pittsburgh, **Allegheny County**. Susan R. Frund, P. G., Michael Baker Jr., Inc., 100 Airside Drive, Moon Township, PA 15108 on behalf of John Coyne, Urban Redevelopment Authority of Pittsburgh, 200 Ross Street, Pittsburgh, PA 15219 has submitted a Notice of Intent to Remediate site soils contaminated with lead and iron above the nonresidential Statewide Health Standards. Remediation will include excavation and off-site disposal of contaminated soil. A nonuse aquifer determination was approved for the site. Future planned use of the property is commercial/retail development.

## INFECTIOUS AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSES

**Applications received or withdrawn under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and Act 93 of June 28, 1988 (P. L. 525, No. 93) and regulations to transport infectious and chemotherapeutic waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

### Renewal Applications Received

**Geisinger System Services**, 100 North Academy Avenue, Danville, PA 17822-1540. **License No. PA-HC 0141**. Received on September 13, 2005.

**Clean Harbors Environmental Services, Inc.**, P. O. Box 859048, Braintree, MA 02184. **License No. PA-HC 0053**. Received on September 16, 2005.

**Altoona Regional Health System**, 620 Howard Avenue, Altoona, PA 16601-4819. **License No. PA-HC 0124**. Received on September 16, 2005.

## HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

**Applications received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate a hazardous waste treatment, storage or disposal facility.**

*Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.*

**PAD002292068. Rohm & Haas Chemicals, LLC**, 200 Rt. 413, Bristol, PA, Bristol Township, **Bucks County**. This application was received for a change of operator for the facility. Application was received by the Southeast Regional Office on October 3, 2005

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Application received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.**

*Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Permit No. 101509. New Morgan Landfill, Inc. (Conestoga Landfill)**, New Morgan Borough, **Berks County**. A proposal for a landfill expansion and a decrease in the average daily volume from 7,210 tons/day to 5,210 tons/day was submitted replacing the application received November 19, 2002. Under the provisions of the Money Back Guarantee Program and the Local Municipal Involvement Process Policy, the host municipality, applicant and the Department of Environmental Protection (Department) has negotiated a new application review timeline. The negotiated number of calendar days in which the Department has to review the application and render a decision is 375 days starting from June 17, 2005, (date of the Local Municipal Involvement Process Meeting). The 375 days does not include time that the applicant uses to respond to review comments from the Department.

**AIR QUALITY**  
**PLAN APPROVAL AND OPERATING PERMIT**  
**APPLICATIONS**  
**NEW SOURCES AND MODIFICATIONS**

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

The Department has received applications for plan approvals and/or operating permits from the following facilities.

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

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

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

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

**PLAN APPROVALS**

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

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.*

**06-03134: Dietrich's Specialty Processing, LLC** (625 Spring Street, Suite 200, Reading, PA 19610) for

installation of new food processing dryers at their plant in Exeter Township, **Berks County**.

**36-05017D: Conestoga Wood Specialties Corp.** (245 Reading Road, P. O. Box 158, East Earl, PA 17519-0158) for installation of a new spray booth and VOC emission increase, in East Earl Township, **Lancaster County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

**49-00045A: Gerdau Ameristeel US, Inc.** (300 Shakespeare Street, Milton, PA 17847) for construction of a new zinc coating booth at their epoxy coating facility in Milton Borough, **Northumberland County**. The air contaminant emissions from the zinc coating booth will be controlled by a cartridge collector. This facility is subject to the Best Available Technology requirements of 25 Pa. Code §§ 127.1 and 127.12.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, William Charlton, New Source Review Chief, (412) 442-4174.*

**26-00475A: Amerikohl Mining, Inc.** (P. O. Box 260 1384, SR 711, Stahlstown, PA 15687) for installation of pneumatic classifier, two cyclones, baghouse and associated conveyors at Jim Mountain Quarry in Springfield Township, **Fayette County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**24-016C: Keystone Powdered Metal Co.** (251 State Street, St. Marys, PA 15857) for replacement of an Induction Heat Treater with a new Induction Heat Treater and Smog Hog by located in the City of St. Marys, **Elk County**. The facility is a Title V Facility.

**42-197D: M & M Royalty—LTD Irishtown Plant** (Route 307, Lewis Run, PA 16738) for modification of the 250,000 Btu/hr Sivalls reboiler to remove the control device at their Irishtown Gas Processing Plant in Lafayette Township, **McKean County**. The facility has a Natural Minor Operating Permit (NM-42-00197).

**61-191A: Seneca Printing and Label, Inc.** (1642 Debence Drive, Sandy Creek, PA 16323) for installation of an eight-color lithograph printing press at their Franklin Plant, in Sandy Creek Township, **Venango County**.

**61-204C: Franklin Bronze and Alloy Co., Inc.** (655 Grant Street, Franklin, PA 16323) for postconstruction of three dust collectors to control fumes and dust from induction furnaces, cut-off saws and grinding operations in the City of Franklin, **Venango County**.

**Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001-4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**09-0115A: Draper—DBS.,** 1803 North Fifth Street, Perkaspie, East Rockhill Township, **Bucks County** for installation of two spray booths which replaces existing three spray booths in East Rockhill Township, Bucks County. This facility is a Synthetic Minor for VOC. There is no emissions increase. Emissions from these sources are 6.47 tons per year of VOC. The Plan approval will



contain recordkeeping and operating restriction designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**54-308-022: Alcoa Engineered Products** (53 Pottsville Street, P. O. Box 187, Cressona, PA 17929-0187) for reactivation of Melting Furnace No. 5 with the installation of low NO<sub>x</sub> burners at their facility in Cressona Borough, **Schuylkill County**. The facility is a Title V facility. The reactivation and operation of the melting furnace will result in annual emissions of 10.24 tons of NO<sub>x</sub>, 0.04 ton of SO<sub>2</sub>, 6.06 tons of CO and 0.41 ton of VOC. The melting furnace is subject to Subpart RRR of the National Emission Standards for Hazardous Air Pollutants, 40 CFR 63.1500–63.1520. The plan approval will include all appropriate monitoring, recordkeeping and reporting requirements designed to keep the source operating within all applicable air quality requirements and will be incorporated into the Title V Operating Permit through an Administrative Amendment in accordance with 25 Pa. Code § 127.450.

**54-399-038: Blackwood, Inc.** (P. O. Box 639, Wind Gap, PA 18091) for construction of a spent foundry sand screening operation and associated diesel generator at their facility in Reilly Township, **Schuylkill County**. The facility is not a Title V facility. The hours of operation for the diesel generator are limited to 1,490 hours per year. A wet spray dust suppression system will be installed to control fugitive particulate matter emissions. The screening operation and diesel generator will have collective annual emission of 6.57 tons of NO<sub>x</sub>, 1.50 tons of CO, 0.08 ton of total hydrocarbons and 3.27 tons of particulate matter. The plan approval will include all appropriate monitoring, recordkeeping, and reporting requirements designed to keep the sources and control device operating within all applicable air quality requirements.

**66-318-003: Proctor and Gamble Paper Products, Co.** (P. O. Box 32, Mehoopany, PA 18629) for modification of a paper converting line at their facility in Washington Township, **Wyoming County**. The facility is a Title V facility. The modification of line 73 of the converting operation will replace/upgrade existing pieces of equipment with more efficient units, thereby increasing line capacity. The replacement equipment will result in an increase of 11.4 tons per year of VOCs. The modification of the converting line is subject to Subpart KK of the National Emission Standards for Hazardous Air Pollutants, 40 CFR 63.820–63.839. The plan approval will include all appropriate monitoring, recordkeeping, and reporting requirements designed to keep the source operating within all applicable air quality requirements and will be incorporated into the Title V Operating Permit through an Administrative Amendment in accordance with 25 Pa. Code § 127.450.

**35-318-089: Flexible Foam Products, Inc.** (P. O. Box 126, 220 Elizabeth Street, Spencerville, OH 45887) for installation and operation of an adhesive spray booth at their facility in Archbald Borough, **Lackawanna County**. The Particulate emissions from the booth shall not exceed 0.02 grain/dscf. The company shall comply with 25 Pa. Code § 123.31 for malodorous emissions. The Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

**48-313-095: Specialty Minerals, Inc.** (640 North 13th Street, Easton, PA 18042) for installation/replacement of

an air cleaning device (fabric collector) to capture particulate emissions from the Pyrogenics Machine Shop No. 1 at their facility in Easton, **Northampton County**. The facility is a non-Title V facility and has been issued the State-only Operating Permit No. 48-00038. The particulate emissions from the fabric collector will not exceed the best available technology standard of 0.02 grain/dscf (2.98 tons per year). The Plan Approval and Operating Permit will contain additional work practice, monitoring and reporting requirements designed to keep the source operating within all applicable air quality requirements.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.*

**06-5065A: Glen Gery Corp.** (423 South Pottsville Pike, Shoemakersville, PA 19555-9742) for installation of two dry limestone adsorption units to control the emissions of hydrogen fluoride (HF) and hydrogen chloride (HCl) for the two tunnel brick kilns at their Shoemakersville Plant in Perry Township, **Berks County**. The kilns are subject to 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants from Brick Manufacturing Facilities. The approval will set limits on particulate, HF, HCl and opacity. The plan approval will include restrictions, monitoring, testing, work practices, recordkeeping and reporting requirements designed to keep the kilns operating within all applicable air quality requirements. The facility is presently covered by the Title V Operating Permit No. 06-05065. The plan approval will be incorporated into this permit in accordance with 25 Pa. Code § 127.450 (Administrative Amendment).

**28-05040A: Industrial Power Generating Corp.** (2250 Dabney Road, Richmond, VA 17011) for increased use of landfill gas for up to 96% of heat input at their existing electric generating facility, in Peters Township, **Franklin County**. This facility's emissions will be approximately 249 tpy of CO, 99 tpy of NO<sub>x</sub>, 49 tpy of VOCs, 15 tpy of SO<sub>2</sub>, 44 tpy Particulate Matter and up to 25 tpy of HAPs. This plan approval will be incorporated into the existing Title V Permit at a later date. This plan approval will include monitoring, recordkeeping and reporting requirements designed to keep the sources operating within all applicable air quality requirements.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, William Charlton, New Source Review Chief, (412) 442-4174.*

**65-00792B: AMI Doduco—Westmoreland, Inc.** (1003 Corporate Lane, Export, PA 15632) for construction and operation of a batch vapor degreaser at their Westmoreland Plant in Murrysville Borough, **Westmoreland County**.

Under 25 Pa. Code § 127.44(a), the Department of Environmental Protection (Department) intends to issue a Plan Approval to the AMI Doduco (Westmoreland), Inc., (1003 Corporate Lane, Export, PA 15632) to allow the construction and operation of a batch vapor degreaser at their Westmoreland Plant located in Murrysville Borough, Westmoreland County.

Based on the applicant's estimate, potential VOC and potential hazardous air pollutant emissions from this new source will be less than 1.0 ton per year.

Based on these potential emissions, the facility is not subject to Prevention of Significant Deterioration or New Source Review (NSR) requirements for this change. This new source will be located at an existing nonmajor facility, however the batch vapor degreaser is subject to

40 CFR 63 Subpart T; National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning Machines. In addition, the facility is one of five area sources which are subject to NESHAPs which require a Title V operating permit.

Copies of the application, the Department's analysis and other documents used in evaluation of the application are available for public inspection during normal business hours at Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222.

For the Department to assure compliance with all applicable standards, the Department proposes to place the following conditions on the Plan Approval:

1. This Plan Approval is to allow the installation and operation of a batch vapor degreaser by AMI Doduco Inc. at their Westmoreland Plant located in the borough of Murrysville, Westmoreland County (25 Pa. Code § 127.12b).

2. The owner/operator shall not permit the emission to the outdoor atmosphere of any malodorous air contaminants from any source, in such a manner that the malodors are detectable outside the property (25 Pa. Code § 123.31).

3. There shall be no fugitive emissions from the facility contrary to 25 Pa. Code §§ 123.1 and 123.2.

4. Trichloroethylene shall be used as a solvent in the degreaser. The use of any other solvent requires written approval from the Department (25 Pa. Code § 127.12b).

5. The vapor degreaser is subject to the regulatory requirements of 40 CFR 63 Subpart T; NESHAPs for Halogenated Solvent Cleaning Machines.

6. Per 40 CFR 63.463 the batch vapor degreaser shall meet the following equipment design standards:

*Requirements of 40 CFR 63.463*

(a)(1)(i) Idling mode cover required.

(a)(2) Freeboard ratio of 0.75 feet or greater.

(a)(3) Automated parts handling system which is capable of operating at 3.4 meters/min (11 ft/min) or less from the initial part loading through part removal.

(a)(4) Safety switch which shuts off sump heat if sump liquid solvent level drops below heater coils.

(a)(5) Safety switch which shuts off sump heat if vapor level rises above the height of the primary condenser.

(a)(6) Primary condenser required.

7. Per 40 CFR 63.463 the batch vapor degreaser shall meet the following work and operational practice requirements:

*Requirements of 40 CFR 63.463*

(d)(1)(i) Cover during idling and downtime mode.

(d)(2) Parts basket or parts being cleaned shall not occupy greater than 50% of solvent air interface unless introduced at a speed of less than 0.9 m/min (3 ft/min).

(d)(4) Parts shall be oriented so that solvent drains from them freely.

(d)(5) Parts baskets or parts shall not be removed until dripping has stopped.

(d)(6) During startup the primary condenser shall be turned on before the sump heater.

(d)(7) During shutdown the sump heater shall be turned off before the primary condenser.

(d)(8) Solvent shall be transferred to and from the unit using threaded leakproof couplings.

(d)(9) The unit shall be maintained as recommended by the manufacturer or better alternative as approved by the Administrator (EPA).

(d)(11) Waste solvent shall be stored in closed containers.

(d)(12) Sponges, fabric, wood and paper shall not be cleaned.

8. Per 40 CFR 63.463 the batch vapor degreaser shall meet the following equipment control combination requirements:

*Requirements of 40 CFR 63.463*

(b)(1)(i) Employ one of the control combinations listed in Table 1 of regulation 40 CFR 63.463.

9. Per 40 CFR 63.463 and 63.466 the batch vapor degreaser shall meet the following monitoring requirements:

*Requirements of 40 CFR 63.463*

(e)(1) Conduct monitoring per 40 CFR 63.466.

(e)(2)(i) Ensure that the freeboard refrigeration device's chilled air blanket temperature, measured at the center of the air blanket, is no greater than 30% of the solvent's boiling point.

(e)(2)(iii)(A) Ensure that the working-mode cover opens only for part entrance and removal and completely covers the cleaning machine openings when closed.

(e)(2)(iii)(B) Ensure that the working-mode cover is maintained free of cracks, holes and other defects.

(e)(2)(iv)(A) Ensure that the idling-mode cover is in place whenever parts are not in cleaning machine and completely covers the cleaning machine openings when closed.

(e)(2)(iv)(B) Ensure that the idling-mode cover is maintained free of cracks, holes and other defects.

(e)(2)(v)(A) Determine the appropriate dwell time for each type of part or parts basket using the most complex parts type or parts baskets as described in 40 CFR 63.465(d).

(e)(2)(v)(B) Ensure that, after cleaning, each part is held in the solvent cleaning machine freeboard area above the vapor zone for the dwell time determined for that particular part or parts basket, or for the maximum dwell time determined using the most complex parts type or parts baskets as described in 40 CFR 63.465(d).

*Requirements of 40 CFR 63.466*

(a)(1) The owner operator shall use a thermometer or thermocouple to measure the temperature at the center of the air blanket during idling mode.

(b)(1) The owner operator shall conduct a visual inspection and record the results on a monthly basis to determine if the cover is opening and closing properly, completely covers the cleaning machine openings when closed, and is free of cracks, holes and other defects.

(b)(2) The owner operator shall conduct monitoring and record the results on a monthly basis to determine the actual dwell time by measuring the period of time that parts are held within the freeboard area of the solvent cleaning machine after cleaning.

(c)(1) The owner operator shall determine the hoist speed, in meters per minute, by measuring the time it takes for the hoist to travel a measured distance.

(c)(2) Hoist speed monitoring shall be conducted monthly. If after the first year no exceedances of the hoist speed are measured, the owner or operator may begin monitoring the hoist speed quarterly.

(c)(3) If an exceedance of the hoist speed occurs during quarterly monitoring, the monitoring frequency returns to monthly until another year of compliance without an exceedance is demonstrated.

(c)(4) If an owner or operator can demonstrate to the Administrator's satisfaction in the initial compliance report the hoist speed can not exceed a speed of 3.4 meters per minute (11 feet per minute), the required monitoring frequency is quarterly, including the first year of compliance.

10. Per 40 CFR 63.463 the batch vapor degreaser shall meet the following test method requirements:

*Requirements of 40 CFR 63.465*

(d) The Owner or operator of a batch vapor cleaning machine using dwell to comply with 40 CFR 63.463 shall determine the appropriate dwell time for each part or parts basket as follows:

(d)(1) Determine the amount of time for each part or parts basket to cease dripping once placed in the vapor zone. The part or parts basket used for this determination must be at room temperature before being placed in the vapor zone.

(d)(2) The proper dwell time for parts or parts baskets to remain in the freeboard area above the vapor zone is no less than 35% of the time determined in (d)(1).

(e) The owner or operator shall determine the potential to emit from all solvent operations using procedures described in 40 CFR 63.465(e)(1)—(3). A facility's potential to emit is the sum of the HAP emissions from all solvent cleaning operations, plus all HAP emissions from other sources at the facility.

11. Per 40 CFR 63.463 the batch vapor degreaser shall meet the following recordkeeping requirements:

*Requirement of 40 CFR 63.467*

(a) The Owner or operator of a batch vapor solvent cleaning machine complying with the provisions of 40 CFR 63.463 shall maintain records in written or electronic form for the lifetime of the machine as follows:

(a)(1) Owner's manuals, or if not available, written maintenance and operating procedures, for the solvent cleaning machine and control equipment.

(a)(2) The date of installation for the solvent cleaning machine and all of its control devices.

(a)(3) Records of the tests required in 40 CFR 63.465(d) to determine an appropriate dwell time for each part or parts basket.

(a)(5) Records of the halogenated HAP solvent content for each solvent used in a solvent cleaning machine subject to the provisions of this subpart.

(b) The Owner or operator of a batch vapor solvent cleaning machine complying with the provisions of Section 63.463 shall maintain records in written or electronic form for a period of 5 years as follows:

(b)(1) The results of control device monitoring required under 40 CFR 63.466.

(b)(2) Information on the actions taken to comply with Section 63.463(e). This information shall include written or verbal orders for replacement parts, a description of the repairs made, and additional monitoring conducted to demonstrate that monitored parameters have returned to accepted levels.

12. Per 40 CFR 63.463 the batch vapor degreaser shall meet the following reporting requirements:

*Requirement of 40 CFR 63.468*

(b) The owner or operator shall submit an Initial Notification Report to the Administrator as soon as practicable before construction is planned to commence. This report shall include all the information required in section 63.5(d)(1) of subpart A (general provisions), with the revisions and additions specified in 40 CFR 63.468(b)(1)—(b)(3).

(c) The owner or operator shall submit an Compliance Report to the Administrator no later than 150 days after startup. This report shall include the requirements specified in 40 CFR 63.468(c)(1)—(c)(4).

(d) The owner or operator shall submit an Initial Statement of Compliance to the Administrator no later than 150 days after startup. This statement shall include the requirements specified in 40 CFR 63.468(d)(1)—(d)(6).

13. The owner/operator shall track and record the following (25 Pa. Code § 127.12b):

(a) The quantity of solvent purchased.

(b) The quantity of solvent placed in the batch vapor degreasing unit.

(c) The quantity of spent solvent recycled on site.

(d) The quantity of spent solvent sent off-site for recovery.

(e) The quantity of sludge disposed of as hazardous waste.

(f) Facilitywide annual trichloroethylene and hazardous air pollutant emissions.

14. Copies of all requests, reports, applications, submittals and other communications shall be forwarded to both Environmental Protection Agency and the Department of Environmental Protection at the following addresses unless otherwise noted.

Director, Air Toxics and Radiation, US EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

Department of Environmental Protection, Bureau of Air Quality, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

15. This Plan Approval authorizes the temporary operation of the sources covered by this Plan Approval provided the following conditions are met (25 Pa. Code § 127.12b):

(a) The owner/operator shall submit written Notice of the Completion of Construction and the operator's intent to commence operation at least 5 days prior to the completion of construction. The notice shall state the date when construction will be completed and the date when the operator expects to commence operation.

(b) Operation of the sources covered by this Plan Approval is authorized only to facilitate the startup and shakedown of sources and air cleaning devices, to permit operations pending the issuance of an operating permit, or to permit the evaluation of the source for compliance with all applicable regulations and requirements.

(c) Upon receipt of the Notice of the Completion of Construction from the owner/operator the Department shall authorize a 180-day Period of Temporary Operation of the sources from the date of commencement of operation. The Notice submitted by the owner/operator, prior to the expiration of this Plan Approval, shall modify the Plan Approval expiration date. The new Plan Approval expiration date shall be 180 days from the date of commencement of operation.

(d) Upon determination by the owner/operator that the sources covered by this Plan Approval are in compliance with all conditions of the Plan Approval the owner/operator shall contact the Department's reviewing engineer and schedule the Initial Operating Permit Inspection.

(e) Upon completion of Initial Operating Permit Inspection and determination by the Department that the sources covered by this Plan Approval are in compliance with all conditions of the Plan Approval the owner/operator shall submit a Title V Operating Permit application to the Department at least 60 days prior to the expiration date of the Plan Approval.

(f) The owner/operator may request an extension of the 180-day Period of Temporary Operation if compliance with all applicable regulations and Plan Approval requirements has not been established. The extension request shall be submitted in writing at least 15 days prior to the end of the Period of Temporary Operation and shall provide a description of the compliance status of the source. The extension request shall include a detailed schedule for establishing compliance and the reasons compliance has not been established. This Period of Temporary Operation may be extended for additional limited periods, each not to exceed 120 days, by submitting an extension request as previously described.

(g) If, at any time, the Department has cause to believe that air contaminant emissions from the sources listed in this plan approval may be in excess of the limitations specified in, or established under this plan approval or the permittee's operating permit, the permittee may be required to conduct test methods and procedures deemed necessary by the Department to determine the actual emissions rate. The testing shall be conducted in accordance with 25 Pa. Code Chapter 139, where applicable, and in accordance with any restrictions or limitations established by the Department at the time it notifies the company that testing is required.

Persons wishing to provide the Department with additional information that they believe should be considered prior to the issuance of the Plan Approval may submit the information to the Department at the following address. A 30-day comment period, from the date of this publication, will exist for the submission of comments. Written comments must contain the following:

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

(2) Identification of the proposed Plan Approval (specify the Plan Approval number).

(3) Concise statements regarding the relevancy of the information or objections to issuance of the Plan Approval. Written comments should be directed to Regional Air Quality Program Manager, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

For additional information persons may contact Mark Gorog, Air Pollution Control Engineer III, (412) 442-4333 at the same address.

*Department of Public Health, Air Management Services:  
321 University Avenue, Philadelphia, PA 19104, Edward  
Braun, Chief, (215) 685-7584.*

**AMS 05058: Calpine Philadelphia, Inc.** (3895-99 Richmond Street, Philadelphia, PA 19137) to modify the operating parameters that must be established during the performance test for seven diesel engines and three gas engines, to change an operating hours per year limit for the gas engines to a gas usage per rolling 12-month period limit, and to adjust facility lbs/hr and tons/rolling 12-month period limits so they are consistent with operating limits and g/bhp-hr emission limits in the City of Philadelphia, **Philadelphia County**. The changes increase the allowable rolling 12-month emission limits by the following: 2.5 tons of NO<sub>x</sub>, 65.2 tons of CO, 5.3 tons of PM/PM10 and 2.8 tons of nonmethane HC. Allowable SO<sub>2</sub> emissions increase by 0.07 g/bhp-hr and decrease by 11.0 tons per rolling 12-month period. The plan approval will contain operating, testing, and recordkeeping requirements to ensure operation within all applicable requirements.

**AMS 05057: Calpine Philadelphia Inc.—SW** (8200 Enterprise Avenue, Philadelphia, PA 19153) to modify the operating parameters that must be established during the performance test for 10 diesel engines and one gas engine, to change an operating hours per year limit for the gas engines to a gas usage per rolling 12-month period limit, and to increase facility allowable SO<sub>2</sub> emissions by 0.07 g/bhp-hr to be consistent with allowable lbs/hr and tons/rolling 12-month period emission limits and engine operating restrictions in the City of Philadelphia, **Philadelphia County**. The plan approval will contain operating, testing and recordkeeping requirements to ensure operation within all applicable requirements.

## OPERATING PERMITS

### **Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**09-00022: Cleveland Steel Container Corp.** (350 Mill Street, Quakertown, PA 18951) for the renewal of a Title V facility in Quakertown Borough, **Bucks County**. The facility's sources include three spray booths, two ovens, parts washer, litho press, comfort heaters, make-up air units, catalyst oxidizer and thermal oxidizer. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

### **Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**09-00075: Dunmore Corp.** (145 Wharton Rd., Bristol, PA 19007) for operation of a plastic film and coating facility in Bristol Township, **Bucks County**. The permit is for a non-Title V (State-only) facility. The major sources of air emissions are three printing presses, with air emissions controlled by total enclosures and a catalytic oxidizer and numerous miscellaneous VOC emitting sources. The permit will include monitoring, recordkeep-

ing and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, Ronald Davis, New Source Review Chief, (717) 705-4702.*

**06-03072: Animal Rescue League of Berks County, Inc.** (P. O. Box 69, Mohnton, PA 19540) for operation of an animal crematory in Cumru Township, **Berks County**. The State-only Operating Permit will include monitoring, recordkeeping, reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

**21-05004: Dairy Farmers of America, Inc.** (4825 Old Gettysburg Road, Mechanicsburg, PA 17055) for operation of a soft drink bottling plant in Lower Allen Township, **Cumberland County**. The State-only operating permit will include requirements for the plant's three natural gas/No. 2 fired boilers. These requirements include emission limits along with provisions for monitoring, recordkeeping and reporting to ensure the facility complies with the applicable air quality regulations. The boilers are subject to 40 CFR Part 60, Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.

**22-03005: MultiServ,—Plant 18** (P. O. Box 5003, Craberry Township, PA 16066) for natural minor operating permit renewal in Steelton Borough, **Dauphin County**. The facility's major sources of emissions include slag handling operations, which primarily emit particulate matter. The operating permit renewal will contain monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**36-05111: Lippert Components, Inc.** (2766 College Avenue, Goshen, IN 46528) for renewal of their air quality permit for their mobile home and recreational vehicle chassis facility in Brecknock Township, **Lancaster County**, 1658 Dry Tavern Road, Denver, PA 17517. This line has a potential to emit over 50 tons per year of VOC's. Lippert Components is limiting their paint use to keep their potential to emit VOCs below 50 tons per year. Actual emissions are expected to be 5 tons per year of VOCs. The operating permit shall contain testing, monitoring, recordkeeping and reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

**12-00005: Department of Transportation** (P. O. Box 342 1924-30 Daisy Street, Clearfield, PA 16830-0342) for operation of the Cameron Regional Repair Facility in Lumber Township, **Cameron County**. The facility's main sources include a sandblasting operation used to clean equipment prior to repainting and a surface coating operation. This facility has the potential to emit SOx, CO, NOx, VOCs, HAPs and PM10 the major emission thresholds.

**47-00010: Hines Nurseries, Inc. d/b/a Hines Horticulture** (233 PPL Road, Danville, PA 17821) for a significant operating permit modification for a greenhouse facility in Anthony and Derry Townships, **Montour County**.

The significant operating permit modification is an increase in the maximum amount of No. 2 fuel oil the facility is permitted to burn from 300,000 gallons in any 12-consecutive month period to 1.5 million gallons in any 12-consecutive month period. Both the original 300,000 gallon per 12-consecutive month limitation and the proposed new 1.5 million gallons per 12-consecutive month limitation are voluntary limitations intended by the permittee to render the respective facility a "synthetic minor" facility with respect to the emission of SOx and thereby prevent the facility from being subject to major source (Title V) permitting requirements.

Additionally, in response to a commitment made by the permittee, the Department proposes to limit the maximum sulfur content of the No. 2 fuel oil used in the facility to .2%, by weight.

The revised No. 2 fuel oil usage limitation and No. 2 fuel oil sulfur content limitation will not change the facility's allowable SOx emission rate which remains at shall not equal or exceed 100 tons in any 12-consecutive month period.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**10-00277: Wiest Asphalt Products and Paving, Inc.** (310 Mitchell Hill Road, Butler, PA 16001) for a Synthetic Minor Permit to operate a hot mix asphalt plant in Summit Township, **Butler County**. The significant sources are hot mix batch plant; fugitives from transfer points, asphalt tank and one natural gas boiler to heat asphalt tank. The facility has taken a restriction on production not exceeding 495,000 tons per year to qualify as a Synthetic Minor facility.

**20-00043: Dunbar Asphalt Products** (11203 Ellion Road, Conneaut Lake, PA 16316) for a Synthetic Minor Permit to operate a hot mix asphalt plant in Sadsbury Township, **Crawford County**. The significant sources are hot mix batch plant; hot elevators, screens, bins, asphalt cement storage tank, cold aggregate bins and finished products silo. The facility has taken a restriction on production not exceeding 495,000 tons per year to qualify as a Synthetic Minor facility.

**10-00264: Thomas E. Siegel d/b/a Bruin Stone Plant** (208 Woodland Road, Shipperville, PA 16254) for a Natural Minor operating permit for the manufacturing of crushed and screened limestone. This facility is outside the town of Bruin, **Butler County**.

**24-00126: US Resistor, Inc.** (1016 Delaum Road, St. Marys, PA 15857) for a Natural Minor Operating Permit for a batch cold cleaning machine at their noninductive resistor manufacturing plant in the City of St. Marys, **Elk County**. The batch cold cleaning machine is applicable to National Emission Standards for Halogenated Solvent Cleaning of 40 CFR Part 63, Subpart T.

**10-00119: Allegheny Mineral Corp.** (Route 168, Slippery Rock, PA 16057) Natural Minor operating permit for the manufacturing of crushed and screened limestone. This facility is outside the town of Emlenton, **Butler County**.

## COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35

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

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

Written comments, objections or requests for informal conferences on applications may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the district mining office indicated before an application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES

permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies who have requested review of NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

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

*Coal Applications Received*

*Effluent Limits*-The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<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.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas, active areas disturbed by coal refuse disposal activities and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

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

**32841602 and NPDES Permit No. PA0092631, AMFIRE Mining Company, LLC** (One Energy Place, Latrobe, PA 15650), to renew and revise the permit and related NPDES permit for the Clymer Tipple in Cheryhill Township, **Indiana County** to add surface acreage to add four slurry injection boreholes. Surface Acres Proposed 0.7. No additional discharges. Application received August 17, 2005.

**03951601 and NPDES Permit No. NA, Keystone Coal Mining Corporation** (P. O. Box 219, 400 Overview Drive, Shelocta, PA 15774), to renew and revise the permit for the Keystone Cleaning Plant in Plumcreek Township, **Armstrong County** to add an NPDES dis-

charge point from Emilie Mine (CMAP No. 03841305. Receiving stream: UNT to Crooked Creek, classified for the following use: WWF. Application received August 30, 2005.

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

**56050108 and NPDES No. PA0249874. Hoffman Mining, Inc.** P. O. Box 130, 118 Runway Road, Friedens, PA 15541, commencement, operation and restoration of a bituminous surface and auger mine in Paint Township, **Somerset County**, affecting 239.9 acres. Receiving streams: UNT to Spruce Run, Spruce Run and Shade Creek classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Border Dam of Cambria/Somerset Authority. Application received September 27, 2005.

**32980106 and NPDES No. PA0234770. M & S Mining, Inc.**, P. O. Box 343, Punxsutawney, PA 15767-0343, permit renewal for the continued operation and restoration of a bituminous surface mine in East Mahoning Township, **Indiana County**, affecting 81.4 acres. Receiving streams: Pickering and Dixon Runs classified for the following uses: HQ and CWF. There are no potable water

supply intakes within 10 miles downstream. Application received September 30, 2005.

*Greensburg District Mining Office: R. R. 2, Box 603C, Greensburg, PA 15601, (724) 925-5500.*

**03000106 and NPDES Permit No. PA0202843. P & N Coal Company, Inc.** (240 West Mahoning Street, P. O. Box 332, Punxsutawney, PA 15767). Renewal application for continued operation and reclamation of a bituminous surface mine, located in Plumcreek Township, **Armstrong County**, affecting 80.7 acres. Receiving stream: UNT to Cherry Run, classified for the following use: CWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: September 29, 2005.

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**16900113 and NPDES Permit No. PA0208132. Ancient Sun, Inc.** (P. O. Box 129, Shippenville, PA 16254). Renewal of an existing bituminous surface strip and auger operation in Redbank Township, **Clarion County**

affecting 214.6 acres. Receiving streams: Two UNTs of Pine Creek, classified for the following use: CWF. The first downstream potable water supply intakes from the point of discharge are Redbank Valley Municipal Authority and Hawthorn Area Municipal Authority. Application for reclamation only. Application received: October 3, 2005.

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

**54951301R2. R & R Anthracite Coal Company**, (538 West Centre Street, Donaldson, PA 17981), renewal of an existing anthracite underground mine operation in Hegins Township, **Schuylkill County** affecting 3.0 acres, receiving stream: none. Application received September 26, 2005.

*Noncoal Applications Received*

*Effluent Limits*

The following noncoal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity <sup>1</sup>		greater than 6.0; less than 9.0	
pH <sup>1</sup>			

<sup>1</sup> The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

*Greensburg District Mining Office: Armbrust Building, R. R. 2, Box 603C, Greensburg, PA 15601-0982, (724) 925-5500.*

**26950402 and NPDES Permit No. PA0201448. Hanson Aggregates PMA, Inc.** (400 Industrial Boulevard, New Kensington, PA 15068). NPDES renewal application for continued operation and reclamation of a noncoal surface mine, located in Bullskin Township, **Fayette County**, affecting 360 acres. Receiving stream: Green Lick Run, classified for the following use: WWF. There is not potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: October 5, 2005.

**65900403 and NPDES Permit No. PA0591866. Hanson Aggregates PMA, Inc.** (400 Industrial Boulevard, New Kensington, PA 15068). NPDES renewal application for continued operation and reclamation of a noncoal surface mine, located in Unity Township, **Westmoreland County**, affecting 492 acres. Receiving streams: UNTs to Nine Mile Run, classified for the following use: WWF. The first potable water supply intake within 10 miles downstream from the point of discharge: Municipal Authority of Westmoreland County. Renewal application received: October 5, 2005.

## FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

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

**Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1–693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401(a) of the FWPCA (33 U.S.C.A. § 1341(a)).**

#### WATER OBSTRUCTIONS AND ENCROACHMENTS

*Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**E64-255. Department of Transportation, Engineering District 4-0**, 55 Keystone Industrial Park, Dunmore, PA 18512, in Manchester Township, **Wayne County**, United States Army Corps of Engineers, Philadelphia District.

To remove the existing structure and to construct and maintain a stream enclosure of a tributary to Little Equinunk Creek (HQ-CWF), consisting of approximately 98 linear feet of 6.5-foot diameter RCP followed by approximately 72 linear feet of 8.0-foot diameter concrete dissipating pipe. The project includes R-8 riprap channel lining extending approximately 50 feet upstream and 50-feet downstream of the stream enclosure. A temporary stream diversion utilizing a 24-inch pipe is also proposed. The project is located along SR 1018, Section EAS, Segment 0180, Offset 1,600, approximately 0.2 mile west of the intersection of SR 1018 and P-645. (Long Eddy, NY-PA Quadrangle N: 14.5 inches; W: 1.8 inches).

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**E34-116: Delaware Township**, R. R. 1, Box 410, Thompsontown, PA 17094 in Delaware Township, **Juniata County**, ACOE Baltimore District.

To construct and maintain a wastewater treatment facility, 6,200 linear feet of 8-inch PVC conventional sewer, 340 linear feet of 4-inch DIP force main sewer, and a remote pumping station involving: 1) four open trench utility line crossings of Delaware Creek (TSF) with associated 20-foot wide, temporary, multipipe road crossings: a) 20-foot by 6-inch (Latitude: 40° 36' 30"; Longitude: 77° 14' 22"), b) 36-foot by 8-inch (Latitude: 40° 36' 30"; Longitude: 77° 14' 15"); c) 30-foot by 8-inch and 4-inch (Latitude: 40° 36' 30"; Longitude: 77° 14' 10"), and d) 60-foot by 8-inch (Latitude: 40° 36' 27"; Longitude: 77° 14' 12"); 2) one 3-foot by 8-inch open trench utility line crossings of a UNT to Delaware Creek (TSF) and a 20-foot wide, temporary, single-pipe road crossing (Latitude: 40° 36' 25"; Longitude: 77° 14' 13"); 3) one 23-foot by 8-inch utility line crossing under an existing culvert carrying a UNT to Delaware Creek (Latitude: 40° 36' 32"; Longitude: 77° 14' 07"); 4) one 6-inch PVC with a 2 foot by 5 foot PennDOT Type D endwall outfall along Delaware Creek (Latitude: 40° 36' 28"; 77° 14' 13"); and 5) to place 267 cy of fill material in the 100 year floodplain of a UNT to Delaware Creek in Delaware Township, Juniata County. The project proposes to directly affect 25 linear feet of stream channel and approximately 3,000 square feet of floodplain impacts, and temporarily impact 200 linear feet of stream channel.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

**E49-289. Herndon Borough Jackson Township Joint Municipal Authority**, P. O. Box 381, Herndon, PA 17830. Sanitary Collection System, in Herndon Borough and Jackson Township, **Northumberland County**, ACOE Baltimore District (Pillow, PA Quadrangle N: 15.42 inches; W: 12.84 inches).

The permit application proposes to install 21,000 LF of 8-10 inch PVC gravity sewer main, 2,400 LF of 1.25-4 force main. The project proposes to cross Sucker Creek (WWF) and three UNTs to the Susquehanna River (all WWF), contain two floodway fills to the Susquehanna River (WWF), one wetland crossing and one new outfall into the Susquehanna River (WWF). The entire project proposes to impact 1.02 acres of stream and floodway impacts and 725 SF of wetland impacts.

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E65-881. Westmoreland County Industrial Development Corporation**, Suite 601, 2 North Main Street, Greensburg, PA 15601. To construct a culvert and fill wetland in East Huntingdon Township, **Westmoreland County**, Pittsburgh ACOE District (Mount Pleasant, PA Quadrangle N: 11.55 inches; W: 13.15 inches and Latitude: 40° 11' 19"—Longitude: 79° 35' 39"). The applicant proposes to extend and maintain an existing 50.0-foot long, 48-inch HDPE culvert in kind in a UNT to Belson Run (WWF) 445 feet downstream, to construct an maintain a 35.0 foot long temporary roadway crossing consisting of two 48-inch HDPE in Belson Run (WWF), and to place and maintain fill in 0.3 acre of wetlands for the purpose of providing developable industrial/commercial building pads. The project will impact an additional total length of 1,733 feet of intermittent UNTs to Belson Run (WWF) and Buffalo Run (WWF). The project is located off of Old Route 119 to the west of the Sony Technology Center.

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

**E43-324. City of Hermitage**, 800 North Hermitage Road, Hermitage, PA 16148-3316. Indian Run Stream Restoration, in City of Hermitage, **Mercer County**, ACOE Pittsburgh District (Sharon East, PA Quadrangle N: 19.3 inches; W: 9.7 inches).

To construct and maintain 1,100 feet of stream restoration within Indian Run (WWF) for the purposes of streambank stabilization, establishment of floodplains and riparian buffers, and improved aquatic habitat, while implementing a natural stream channel design approach consisting of the following activities: channel relocation, installation of cross vanes and j-hooks and creation of floodplain areas beginning at a point on SR 62 approximately 1,500 feet northeast of the intersection of SR 62 and SR 18 and ending at a point along Sunset Boulevard.

**E43-327. Department of Transportation, District 1-0**, 255 Elm Street P. O. Box 398, Oil City, PA 16301. SR 2025, Section B00, Segment 0020, Offset 0000 Across Barmore Run, in Pine Township, **Mercer County**, ACOE Pittsburgh District (Grove City, PA Quadrangle N: 3.6 inches; W: 14.3 inches).

To remove the existing structure and to construct and maintain a 30-foot long concrete twin cell box culvert having a 30 foot wide by 7 foot high waterway opening



across Barmore Run on SR 2025, Section B00, Segment 0020, Offset 0000 less than 1 mile SW of Grove City. According to Chapter 93 Barmore Run is classified as a CWF, this project does not involve impacts to wetlands.

### ENVIRONMENTAL ASSESSMENTS

*Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.*

**EA33-003. J.R. Resources, LP**, P. O. Box 188, Ringgold, PA 15770. Ringgold Township, Jefferson County, ACOE Pittsburgh District.

Project proposes to construct, operate, and maintain a nonjurisdictional dam across a tributary to Eagle Run (CWF) for recreational purposes. The proposed dam will directly and indirectly impact approximately 500 linear feet of stream channel and approximately 0.18 acres of

riparian wetlands. The applicant proposes to construct 0.40 acre of replacement wetland at the project site. The dam is located approximately 50 feet north of the intersection of Ringgold Timblin Road (SR 3003) and St. James Road (T311) (Dayton, PA Quadrangle, N: 20.4"; W: 7.6").

### DAM SAFETY

*Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.*

**D52-199. Conashaugh Lakes Community Association**, 4020 Conashaugh Lakes, Milford, PA- 18337. To operate and maintain the Conashaugh Lake Dam for the purpose of recreation, (Edgemere, PA Quadrangle N: 10.7 inches; W: 15.2 inches) in Dingman Township, **Pike County**.

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## ACTIONS

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

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

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOI) for coverage under general permits. This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal wastes; discharges to groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. Permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

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

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

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

**I. NPDES Renewal Permit Actions**

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

<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>
PA0060330	Hawley Area Authority P. O. Box 145 Hawley, PA 18428	Hawley Borough Pike County	Lackawaxen River HQ-TSF 1B	Y

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (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>
PA0024074 (Sewage)	Shoemakersville Municipal Authority 242 Main St. Shoemakersville, PA 19555-1410	Berks County Shoemakersville Borough	Schuylkill River 3B	Y
PA0082694 (Sewage)	East St. Clair Township Municipal Authority—Fishertown WTP P. O. Box 55 Fishertown, PA 15539-0055	East St. Clair Township Bedford County	Dunning Creek 11-C	Y
PA0082732 (Sewage)	East St. Clair Township Municipal Authority—Stone Creek WTP P. O. Box 55 Fishertown, PA 15539-0055	East St. Clair Township Bedford County	Dunning Creek 11-C	Y
PA0033995 (Sewage)	Berks County Services Center 633 Court Street Reading, PA 19601	Bern Township Berks County	Plum Creek 3-C	Y
PA0084026 (Sewage)	Northwestern Lancaster County Authority 97 North Penryn Road Manheim, PA 1754	Lancaster County Penn Township	Chickies Creek 7-G	Y

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

<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>
PA0090301 Industrial Waste	Solid Waste Disposal, Inc. 211 Brunner Road Zelienople, PA 16063	Beaver County Brighton Township	UNT to Sixmile Run	Y
PA0218081 Industrial Waste	WHEMCO-Steel Castings, Inc. 5 Hot Metal Street Suite 300 Pittsburgh, PA 15203-2351	Allegheny County West Homestead Borough	Streets Run West Run and Monongahela River	Y
PA0032395 Sewage	Richard T. Patik P. O. Box 511 Rumbaugh Avenue Mt. Pleasant, PA 15666	Fayette County Perry Township	UNT of Virgin Run	Y
PA0043036 Sewage	PA Conference Assoc. of Seventh Day Adventists, Inc. 720 Museum Road Reading, PA 19611	Indiana County Banks Township	Straight Run	Y
PA0090816 Sewage	51 Park Properties 3010 Homestead-Duquesne Blvd. West Mifflin, PA 15122	Allegheny County Forward Township	UNT to Gillespie Run	Y
PA0097691 Sewage	Richard D. McClair 7 KOA Road Washington, PA 15301	Washington County South Strabane Township	UNT of Little Chartiers Creek	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>
PA0221554	Gateway Commerce Center, LP 1605 Old Route 18 Wampum, PA 16157-9802	New Beaver Borough Lawrence County	UNT to Beaver River 20-B	Y
PA0223077	PW Hardwood, LLC Dry Kiln Lumber Facility 11424 Route 36 Brookville, PA 15825	Rose Township Jefferson County	Beaver Run 17-C	Y

## II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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

**NPDES Permit No. PA-0065021**, Sewage, **SMT Holdings, LLC**, 400 Southpointe Boulevard, Canonsburg, PA 15317. This proposed facility is located in West Brunswick Township, **Schuylkill County**.

Description of Proposed Action/Activity: Issuance of NPDES Permit to discharge 10,000 gpd of treated sewage to Pine Creek.

**NPDES Permit No. PA-0020435-A1**, Sewage, **Little Washington Wastewater Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010-3420. This proposed facility is located in White Haven Borough, **Luzerne County**.

Description of Proposed Action/Activity: Issuance of NPDES Permit.

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

**NPDES Permit No. PAS603504**, Stormwater, **Buck Auto Sales & Salvage, Inc.**, 915 Lancaster Pike, Quarryville, PA 17566. This proposed facility is located in Providence Township, **Lancaster County**.

Description of Proposed Action/Activity: Authorization to discharge to the UNT of the Conowingo Creek in Watershed 7-K.

**NPDES Permit No. PA0053091**, Industrial Waste, **Giorgio Foods, Inc.**, P. O. Box 96, Temple, PA 19560-0096. This proposed facility is located in Maiden creek Township, **Berks County**.

Description of Proposed Action/Activity: Authorization to discharge to Willow Creek in Watershed 3-C.

**NPDES Permit No. PA0088242**, CAFO, **Country View Family Farms, Huston Hollow Farm**, 6360 Flank Drive, Suite 100, Harrisburg, PA 17112-2766. This proposed facility is located in Taylor Township, **Fulton County**.

Description of Size and Scope of Proposed Operation/Activity: Authorization to operate a 1,255-AEU swine operation in Watershed 12-C.

## III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

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

**WQM Permit No. 3905406**, Sewage, **Upper Saucon Township Municipal Authority**, 5500 Camp Meeting Road, Center Valley, PA 18034-9444. This proposed facility is located in Upper Saucon Township, **Lehigh County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit.

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

**WQM Permit No. 6703407**, Sewerage, **Dillsburg Area Authority**, Four Barlo Circle, Suite E, Dillsburg, PA 17019. This proposed facility is located in Carroll Township, **York County**.

Description of Proposed Action/Activity: Replacement of the Ore Bank Pump Station.

**WQM Permit No. 3605408**, Sewerage, **East Earl Sewer Authority**, 4610 Division Highway, East Earl, PA 17519. This proposed facility is located in East Earl Township, **Lancaster County**.

Description of Proposed Action/Activity: Construction/Operation of the Cheltenham Pump Station with dual submersible 80 gpm pumps and approximately 1,900 feet of 4-inch force main.

**WQM Permit No. 0605201**, Industrial Waste, **Giorgio Foods, Inc.**, P. O. Box 96, Temple, PA 19560. This proposed facility is located in Maiden creek Township, **Berks County**.

Description of Proposed Action/Activity: Construction/Operation of a forced draft cooling tower along with temperature controller/recorders, cooling tower pumps, recirculation papers and appurtenances.

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

**WQM Permit No. 0805402**, Sewerage Municipal, **Athens Township Authority**, 370 Pennsylvania Avenue, Sayre, PA 18840. This proposed facility is located in Athens Township, **Bradford County**.

Description of Proposed Activity: Modification to two pump stations and a sewer main extension consisting of approximately 11,000 feet of gravity and 2,850 feet of force main.

**WQM Permit No. 1805402**, Sewerage Municipal, **Woodward Township Sewer Authority**, 86 Riverside Terrace, Lock Haven, PA 17745. This proposed facility is located in Woodward Township, **Clinton County**.

Description of Proposed Action/Activity: Reconstruction of the existing Upper Lockport Pump Station in Riverview Park with new wet well, submersible pumps, controls and associated piping.

*Southwest Region: Water Management Program Manager; 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**WQM Permit No. 6505404**, Sewerage, **Salem Township Supervisors**, 244 Congruity Road, Greensburg, PA 15601. This proposed facility is located in Salem Township, **Westmoreland County**.

Description of Proposed Action/Activity: Construction and operation of a pump station, force main and gravity sewer extensions.

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

**WQM Permit No. WQG018407**, Sewerage, **Bradley W. Irwin**, 8971 Old Route 422, New Castle, PA 16101. This proposed facility is located in Franklin Township, **Elk County**.

Description of Proposed Action/Activity: A single residence sewage treatment plant.

**WQM Permit No. WQG018410**, Sewerage, **Jeremy L. Johnson**, R. D. 1, Box 160B, Youngsville, PA 16371. This proposed facility is located in Brokenstraw Township, **Warren County**.

Description of Proposed Action/Activity: A single residence sewage treatment plant.

**WQM Permit No. WQG018415**, Sewerage, **Hugh and Kathy Lauffenberger**, 740 Cobham Park Road, Warren, PA 16365. This proposed facility is located in Glade Township, **Warren County**.

Description of Proposed Action/Activity: A single residence sewage treatment plant.

#### **IV. NPDES Stormwater Discharges from MS4 Permit Actions**

#### **V. NPDES Waiver Stormwater Discharges from MS4 Actions**

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

<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
West Abington Township R. R. 3, Box 26 Dalton, PA 18414	Lackawanna	West Abington Township	UNT to South Branch of Tunkhannock Creek

#### **VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011505043	The Hankin Group Eagleview Condos on the Square 707 Eagleview Boulevard P. O. Box 562 Exton, PA 19341	Chester	Uwchlan Township	Shamona Creek (HQ-TSF)

*Southcentral Region: Water Management Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI032104004	Skipjack Pennsylvania, LLC 7061 Columbia Gateway Drive Columbia, MD 21046	Cumberland	Silver Spring Township	Trindle Spring Run HQ-CWF
PAI033104002	Bonney Forge, Inc. P. O. Box 330 Mount Union, PA 17066-0330	Huntingdon	Shirley Township	UNT Juniata River HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041805001	Department of Transportation 1924-30 Daisy St. Clearfield, PA 16830	Clinton	Chapman Township	Young Womans Creek HQ-CWF
PAI041405005	Nittany Express Inc. 2526 Shingletown Road State College, PA 16801	Centre	Benner Township	Buffalo Run HQ-CWF

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI044905001	Michael Timmons Timber Development Corp. 1060 W. State Rd. Suite 112 Longwood, FL 32750	Northumberland	Coal Township	Quaker Run CW

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

*Armstrong County Conservation District: Armsdale Administration Building, Suite B-2, 124 Armsdale Road, Kittanning, PA 16201, (724) 548-3425.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050305001	Worthington West Franklin Joint Municipal Authority 102 West Main Street Worthington, PA 16262	Armstrong	Worthington Borough and West Franklin Township	Buffalo Creek (HQ-TSF)

*Greene County Conservation District: 93 East High Street, Room 215, Waynesburg, PA 15370, (724) 852-5278.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI053005001	Consol Pennsylvania Coal Co. 1525 Pleasant Grove Road P. O. Box J Claysville, PA 15323	Greene	Richhill Township	Headwaters of Fletcher Run (HQ-WWF)

## **VII. Approvals to Use NPDES and/or Other General Permits**

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

### **List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment Plants
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

#### *General Permit Type—PAG-2*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
East Brandywine Township Chester County	PAG2001505050	Gambone Development Company P. O. Box 287 Fairview Village, PA 19409	Bondville Tributary (TSF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

## NOTICES

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<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Newlin Township Chester County	PAG2001504121	Chadds Ford Builders 276A Dilworthtown Road West Chester, PA 19302	Pocopson Creek (TSF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Kennett Township Chester County	PAG2001505070	Nathan Schwartz P. O. Box 817 740 West Cypress Street Kennett Square, PA 19438	West Branch Red Clay Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Goshen Township Chester County	PAG2001505058	DiRocco Brothers Company 509 Maple Avenue West Chester, PA 19382	Chester Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Whiteland Township Chester County	PAG2001505050	West Whiteland Township 222 North Pottstown Pike Exton, PA 19341	Tributary Valley Creek (CWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Bradford Township Chester County	PAG2001505002	Genterra Corporation 101 Marchwood Road Exton, PA 19341	East Branch Brandywine Creek (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Kennett Township Chester County	PAG2001505044	John Watkins P. O. Box 821 Meddenhall, PA 19357	White Clay Creek (CWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Bradford Township Chester County	PAG2001505077	Charles and Carol Ruthera 163 Davis Road Coatesville, PA 19320	UNT East Branch Brandywine Creek (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Aston Township Delaware County	PAG2002305003	Murphy & Smith Developers, LLC 274 Bodley Road Aston, PA 19014	Chester Creek (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Newtown Township Delaware County	PAG2002305055	601 Development Partners, LP 2 Bala Plaza Bala Cynwyd, PA 19004	Darby Creek (CWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Montgomery Township Montgomery County	PAG2004604220	Raymond C. Au 675 Bethlehem Pike Development 1350 Elon Circle Fort Washington, PA 19034	UNT Neshaminy Creek (TSF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Providence Township Montgomery County	PAG2004605041	Lower Providence Recreational Partners General Washington Country Club Dev. 2620 Egypt Road Norristown, PA 19401	Mine Run and Schuylkill River (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Salford Township Montgomery County	PAG2004605042	Telvil Corporation Clemens Tract Subdivision 528 Main Street Suite 101 Harleysville, PA 19438	East Branch Perkiomen Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Plymouth and Whitpain Townships Montgomery County	PAR10T9181	Department of Transportation SR 309, Section 104 Construction 7000 Geerdes Boulevard King of Prussia, PA 19406	Sandy Run (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Pottsgrove Township Montgomery County	PAG2004605149	Pottsgrove Soccer Association Richards Park Field P. O. Box 1548 Pottstown, PA 19464	Schuylkill River (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Skippack Township Montgomery County	PAG2004605096	John Strouse John Strouse Land Development 4391 Skippack Pike Schwenksville, PA 19426	Perkiomen Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Frederick Township Montgomery County	PAG2004605070	Frederick Mennonite Community 2849 Big Road Frederick, PA 19435	Scioto Creek (TSF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Merion Township Montgomery County	PAG2004604190	Brett Weinstein 707 West DeKalb Pike Suite 2 King of Prussia, PA 19406	Crow Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Whitpain Township Montgomery County	PAG2004606086	Keystone Property Group Sentry Park Development One West First Avenue Conshohocken, PA 19428	UNT Sawmill Run (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Skippack Township Montgomery County	PAG2004605058	Rotelle Properties, LLC The Morgans Village Subdivision 219 Niantic Road Barto, PA 19504	Skippack Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Pottsgrove Township Montgomery County	PAG2004605004	Gambone Brothers Development Co. Southview Development 1030 West Germantown Pike Fairview Village, PA 19409	Sprogels Run (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
New Hanover Township Montgomery County	PAG2004605087	Sal Paone, Inc. Pryor Tract Development 1120 North Bethlehem Pike Spring House, PA 19477	Deep Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2011505015	Children's Hospital of Philadelphia CHOP—South Campus Project 34th and Civic Center Boulevard Philadelphia, PA 19104-4399	Schuylkill River (CWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
City of Philadelphia Philadelphia County	PAG2011505018	School District of Philadelphia New Samuel Fels High School Dev. JFK Center 734 Schuylkill Avenue Philadelphia, PA 19146-2397	Delaware River (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Hanover Township Luzerne County	PAG2004005024	Earth Conservancy 101 South Main St. Ashley, PA 18706	Espy Run CWF and Nanticoke Creek CWF	Luzerne County Cons. Dist. (570) 674-7991
Rush Township Schuylkill County	PAG2005405027	Air Products & Chemicals, Inc. 357 Marian Ave. Tamaqua, PA 18252	Neifert's Creek CWF	Schuylkill County Cons. Dist. (570) 622-3742
Greenfield Township Lackawanna County	PAG2003505019	CHM, Inc. P. O. Box 130 Pocono Pines, PA 18350	Dundaff Creek CWF	Lackawanna County Cons. Dist. (570) 281-9495
Bethlehem Township Northampton County	PAG2004805021	T & S Development 623 Selvaggio Dr. Suite 200 Nazareth, PA 18064	Nancy Run (Source to SR 3007 Bridge) CWF, MF	Northampton County Cons. Dist. (610) 746-1971
City of Hazleton West Hazleton Borough and Hazle Township Luzerne County	PAG2004005032	Robert T. Doble Department of Transportation P. O. Box 111 Scranton, PA 18501	Black Creek CWF	Luzerne County Cons. Dist. (570) 674-7991
Hazle Township Luzerne County	PAG2004005029	MLB Realty, LLC 23 Faith Drive Hazleton, PA 18202	UNT to Tom Hicken Creek CWF	Luzerne County Cons. Dist. (570) 674-7991
Branch Township Schuylkill County	PAG2005405011	Richard J. and Patricia Withelder 88 West Donaldson St. Zerbe, PA 17981	UNT to West Branch of Schuylkill River CWF	Schuylkill County Cons. Dist. (570) 622-3742
Bradford County Canton and Leroy Townships Sullivan County Fox Township	PAG2000805009	Hugh McMahon Schrader Creek Watershed Assoc. R. R. 2, Box 292 Towanda, PA 18848	Little Schrader Creek Schrader Creek Pine Swamp Run Lye Run EV	Bradford County Conservation District (570) 265-5539, Ext. 205
Centre County Walker Township	PAR10F149 Phase V	Robert McDaniel DBW Land Development Partnership 1042 E. Springfield Dr. Bellefonte, PA 16823	Nittany Creek HQ-CWF	Centre County Conservation District (814) 355-6817
Centre County College Township	PAR10F1521	P. Jules Patt BXAL, Inc. 422 Allegheny St. Hollidaysburg, PA 16848	UNT Spring Creek HQ-CWF	Centre County Conservation District (814) 355-6817
Centre County Benner and Spring Townships	PAG2001405014	Mike Glass Amerleigh, P. L. P. O. Box 1998 Lancaster, PA 17608	Spring Creek HQ-CWF	Centre County Conservation District (814) 355-6817
Centre County Patton Township	PAG20014040181	Daniel Hawbaker Valley Vista Development Partnership P. O. Box 135 State College, PA 16804	UNT Big Hollow CWF	Centre County Conservation District (814) 355-6817



<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Clearfield County Sandy Township	PAG2001705011	Lilavati Corp. 629 S. Main St. DuBois, PA 15801	Slab Run CWF	Clearfield County Conservation District (814) 765-2629
Clearfield County Lawrence Township	PAG2001705016	Clearfield County Career and Technology Center 1620 River Rd. Clearfield, PA 16830	UNT W. Br. Susquehanna River CWF	Clearfield County Conservation District (814) 765-2629
Clearfield County Sandy Township	PAG2001705017	Hometown Investors c/o Dr. Jeffery Rice 90 Beaver Dr., Box 1 DuBois, PA 15801	Sandy Lick Creek CWF	Clearfield County Conservation District (814) 765-2629
Clearfield County Sandy Township	PAG2001705018	Moore Development P. O. Box 311 DuBois, PA 15801	Reisinger Run CWF	Clearfield County Conservation District (814) 765-2629
Clinton County Bald Eagle Township	PAG2001805004	Mill Hall Development LLC 121 Prosperous Place Suite 68 Lexington, KY	Bald Eagle Creek WWF	Clinton County Conservation District (570) 726-3798
Lycoming County Wolf Township	PAG2004105009	Scott Moll Hughesville Raceway Self Storage 169 Katzmaier Rd. Montoursville, PA 17754	Little Sugar Run CWF	Lycoming County Conservation District (570) 433-3003
Lycoming County Muncy Borough	PAG2004105010	Timothy Tremel Lycoming Mall Improvement 200 S. Broad St. Philadelphia, PA	UNT Carpenters Run WWF	Lycoming County Conservation District (570) 433-3003
Lycoming County Montoursville Borough	PAG2004105012	Timothy Conklin 133 Sunset Dr. Montoursville, PA 17754	UNT Tules Run WWF	Lycoming County Conservation District (570) 433-3003
Lycoming County Muncy Township Fairfield Township	PAG2004105013	Michael Worthington Worthington Trailers 415 Airport Rd. Montoursville, PA 17754	UNT Turkey Run WWF	Lycoming County Conservation District (570) 433-3003
Northumberland County Mt. Carmel Township	PAG2004905011	Pactiv-Newspring Bldg. Expansion 1016 Locust Gap Highway Mr. Carmel, PA 17854	Shamokin Creek WWF	Northumberland County Conservation District (570) 286-7114, Ext. 4
Snyder County Selinsgrove Borough	PAG2005505006	Selinsgrove Inn 200 Block N. Market St. Selinsgrove, PA 17870	Penns Creek WWF	Snyder County Conservation District (570) 837-0007, Ext. 112
Westmoreland County Murrysville	PAG2006504050	IDC, Inc. 716 Oliver Building Pittsburgh, PA 15222	UNT to Turtle Creek (TSF)	Westmoreland County CD (724) 837-5271
Westmoreland County East Huntingdon Township	PAG2006505010	J. B. Nagle Properties 927 North Forest Trail Crownsville, MD 21032	Tributary to Jacks Run (WWF)	Westmoreland County CD (724) 837-5271
Westmoreland County Mount Pleasant Township	PAG2006505018	Department of Transportation P. O. Box 459 North Gallatin Avenue Ext. Uniontown, PA 15401	Basins of Jacobs Creek (WWF)	Westmoreland County CD (724) 837-5271

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<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Westmoreland County Rostraver Township	PAG2006505031	Rostraver Township Sewer Authority P. O. Box 976 Port Royal Road Belle Vernon, PA 15012	Pollock Run, (WWF) Cedar Creek (TSF)	Westmoreland County CD (724) 837-5271
Westmoreland County Manor Borough	PAG2006505049	Patriot Corporation Bohine Building, Suite 6 1004 Harrison City Road Harrison City, PA 15636	UNT to Bushy Run (TSF)	Westmoreland County CD (724) 837-5271
Westmoreland County S.W. Greensburg Borough	PAG2006505059	C. J. Polartiz 3100 Grand Avenue Pittsburgh, PA 15225	Jacks Run (WWF)	Westmoreland County CD (724) 837-5271
Westmoreland County Hempfield Township	PAG2006505061	T. E. Products Pipeline P. O. Box 2521 Houston, TX 77252	Tributary of Jacks Run (WWF)	Westmoreland County CD (724) 837-5271
Westmoreland County Rostraver Township	PAG2006505062	Cedar Hills Dev., Inc. P. O. Box 94 Belle Vernon, PA 15012	UNT to Cedar Creek (TSF)	Westmoreland County CD (724) 837-5271
Slippery Rock Borough Butler County	PAG2001005024	Howard E. Meyer 210 White Oak Drive Slippery Rock, PA 16057	Slippery Rock Creek CWF	Butler Conservation District (724) 284-5270
Summit Township Erie County	PAG2002505009	Steve Rapp 4132 Stone Creek Drive Erie, PA 16506 Hamot Village Subdiv.	UNT Walnut Creek CWF; MF	Erie Conservation District (814) 825-6403
Harborcreek Township Erie County	PAG2002505017	Westminster Place Partnership 6561 Fair Oaks Circle Fairview, PA 16415	UNT Fourmile Creek WWF	Erie Conservation District (814) 825-6403
City of Erie Erie County	PAG2002505022	Erie County Convention Center & Sheraton Hotel 809 French Street Erie, PA 16507	Prresque Isle Bay WWF	Erie Conservation District (814) 825-6403
Millcreek Township Erie County	PAG2002505026	Joseph Palermo 3435 West Lake Road Erie, PA 16505	UNT Walnut Creek CWF; MF	Erie Conservation District (814) 825-6403
Harborcreek Township Erie County	PAG2002505023	International Paper Uniflow Center Room D 1525 East Lake Road Erie, PA 16511	Scott Run CWF; MF	Erie Conservation District (814) 825-6403
Millcreek Township Erie County	PAG2002505024	Erie Water Works	Lake Erie WWF; CWF	Erie Conservation District (814) 825-6403
Lake City Borough Erie County	PAG2002505030	Port Harbor Company P. O. Box 1246 Erie, PA 16512	Elk Creek/Lake Erie WWF	Erie Conservation District (814) 825-6403
Edinboro Borough	PAG2002505031	Edinboro University 200 Scotland Road Edinboro, PA 16444	Darrows Creek WWF	Erie Conservation District (814) 825-6403
Wayne Township Lawrence County	PAG2003705005	Ellwood City Borough 525 Lawrence Ave. Ellwood City, PA 16117	Connoquenessing Creek WWF	Lawrence Conservation District (724) 652-4512
Washington Township Jefferson County	PAG2003305004	Clearfield Jefferson Counties Regional Airport Authority P. O. Box 299 Falls Creek, PA 15840	Keys Run and UNT CWF	Jefferson Conservation District (814) 849-7463

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Conewango Township Warren County	PAG2006204005	Echo Real Estate Services 701 Alpha Drive Pittsburgh, PA 15238	Jackson Run CWF Conewango Creek WWF	Department of Environmental Protection 230 Chestnut Street Meadville PA 16335 (714) 332-6945
<i>General Permit Type—PAG-3</i>				
<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>
Falls Township Bucks County	PAR800078	Kinder Morgan Bulk Terminal, Inc. 1 Sinter Rd. Fairless Hills, PA 19030	Delaware River 2E Watershed	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
Morrisville Borough Bucks County	PAR800135	Allied Waste Services 9240 E. Tyburn Rd. Morrisville, PA 19067	UNT to Rock Run 2E Watershed	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
Ridley Township Delaware County	PAR800098	UPS Cartage Services 200 Industrial Hwy. Ridley Park, PA 19078	Darby Creek 3G Watershed	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
City of Philadelphia Philadelphia County	PAR230089	United Color Manufacturing, Inc. 2490 E. Tioga St. Philadelphia, PA 19134	Delaware River 3F Watershed	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
Centre County Potter Township	PAR604830	Larry Moyer 138 Lower Georges Valley Road Spring Mills, PA 16875	Potter Run (CWF)	Northcentral Regional Office Water Management Program 208 West Third Street, Suite 101 Williamsport, PA 17701 (570) 327-3664
City of Clearfield Clearfield County	PAR114814	Marathon Equipment Company 1102 Industrial Road Clearfield, PA 16830	West Branch Susquehanna River WWF	Northcentral Regional Office Water Management Program 208 West Third Street, Suite 101 Williamsport, PA 17701 (570) 327-3664
Economy Borough Beaver County	PAR706121	Hanson Aggregates BMC, Inc. 2200 Springfield Pike Connellsville, PA 15425	Big Sewickley Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
City of Corry Erie County	PAR23833	Foamex, LP 406 South Shady Avenue Corry, PA 16407	UNT to Hare Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
City of Erie Erie County	PAR808351	Mountfort Terminal, Ltd. 2 East Bay Drive Erie, PA 16512-0179	Tributaries to Presque Isle Bay	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*Facility Location:  
Municipality &  
County*Pine Creek  
Township  
Jefferson CountyPermit No.  
PAR218323*Applicant Name &  
Address*Brookville Wood  
Products, Inc.  
12942 Route 322  
Brookville, PA  
15825-6946*Receiving  
Water/Use*

Five Mile Run

*Contact Office &  
Phone No.*DEP—NWRO  
Water Management  
230 Chestnut Street  
Meadville, PA 16335-3481  
(814) 332-6942*General Permit Type—PAG-4**Facility Location:  
Municipality &  
County*Redbank Township  
Clarion CountyPermit No.  
PAG048358*Applicant Name &  
Address*Dane N. Rowe  
5733 Rt. 66  
Fairmont City, PA 16244*Receiving  
Water/Use*

Leisure Run

*Contact Office &  
Phone No.*DEP—NWRO  
Water Management  
230 Chestnut Street  
Meadville, PA 16335-3481  
(814) 332-6942Franklin Township  
Erie CountyPermit No.  
PAG049199Bradley W. Irwin  
8971 Old Route 422  
New Castle, PA 16101

UNT to Little Elk Creek

DEP—NWRO  
Water Management  
230 Chestnut Street  
Meadville, PA 16335-3481  
(814) 332-6942Brokenstraw  
Township  
Warren CountyPermit No.  
PAG049202Jeremy L. Johnson  
R. D. 1, Box 160B  
Youngsville, PA 16371

Mathews Run

DEP—NWRO  
Water Management  
230 Chestnut Street  
Meadville, PA 16335-3481  
(814) 332-6942Hempfield  
Township  
Mercer CountyPermit No.  
PAG048399Harold McCrillis  
566 Methodist Road  
Greenville, PA 16125

Saul Run

DEP—NWRO  
Water Management  
230 Chestnut Street  
Meadville, PA 16335-3481  
(814) 332-6942Glade Township  
Warren CountyPermit No.  
PAG049207Hugh and Kathy  
Lauffenberger  
740 Cobham Park Road  
Warren, PA 16365

Glade Run

DEP—NWRO  
Water Management  
230 Chestnut Street  
Meadville, PA 16335-3481  
(814) 332-6942*General Permit Type—PAG-12**Facility Location &  
Municipality*Berks County  
Penn TownshipPermit No.  
PAG123587*Applicant Name &  
Address*Nevin Rutt  
Nevin Rutt Farm  
524 North Garfield Road  
Bernville, PA 19506*Receiving  
Water/Use*UNT to Blue Marsh  
Creek  
WWF*Contact Office &  
Phone No.*DEP—SCRO  
909 Elmerton Avenue  
Harrisburg, PA 17110  
(717) 705-4707**PUBLIC WATER SUPPLY (PWS)  
PERMITS**

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the

*Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

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

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

## SAFE DRINKING WATER

**Actions taken under the Pennsylvania Safe Drinking Water Act**

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

**Operations Permit** issued to **North Coventry Water Authority**, P. O. Box 394, Pottstown, PA 19464, (PWS ID 1150220) North Coventry Township, **Chester County** on October 7, 2005, for the operation of facilities approved under Construction Permit No. 1504507.

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

**Operations Permit** issued to **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010 (PWS ID 2400093) Kingston Township, **Luzerne County** on September 26, 2005, for the operation of facilities approved under Construction Permit No. N/A.

**Operations Permit** issued to **Philip M. Buss Water Company**, 5432 St. Peters Road, Emmaus, PA 18049 (PWS ID 3390076) Upper Macungie Township, **Lehigh County** on September 29, 2005, for the operation of facilities approved under Construction Permit No. 3903503.

*Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Permit No. 3805503**, Public Water Supply.

Applicant	<b>Timber Service Corporation</b>
Municipality	South Londonderry Township
County	<b>Lebanon</b>
Type of Facility	Construction of a booster pump station and caustic soda addition for ph adjustment.
Consulting Engineer	David J Gettle Kohl Bros., Inc. P. O. Box 350 Myerstown, PA 17067
Permit to Construct Issued:	9/27/2005

**Permit No. 5005505 E**, Public Water Supply.

Applicant	<b>Newport Water Authority</b>
Municipality	Howe Township
County	<b>Perry</b>
Type of Facility	Emergency construction of the Campbell Well
Consulting Engineer	Max E. Stoner, P. E. Glace Associates, Inc. 3705 Trindle Rd. Camp Hill, PA 17011
Permit to Construct Issued:	9/30/2005

**Operations Permit** issued to: **Exelon Nuclear—Peach Bottom Atomic Power Station**, 7670905, Delta Borough, **York County** on 10/3/2005 for the operation of facilities approved under Construction Permit No. 6704516 MA.

**Operations Permit** issued to: **North Middleton Authority**, 7210049, North Middleton Township, Middlesex,

**Cumberland County** on 9/23/2005 for the operation of facilities approved under Construction Permit No. 2105507 MA.

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

**Permit No. 4146363EP114** Public Water Supply.

Applicant	<b>Harmony Brook, Inc.</b>
Township or Borough	State College Borough
County	<b>Centre</b>
Responsible Official	Jeanne Cantu, General Manager Culligan Store Solutions 1030 Lone Oak Road, Suite 110 Eagan, MN 55121-2251
Type of Facility	Public Water Supply—Permit-By-Rule
Consulting Engineer	N/A
Permit Issued Date	10/7/05
Description of Action	Install a Culligan Store Solutions system at the Wal-Mart Supercenter No. 2230.

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

**Permit No. 2605503**, Public Water Supply.

Applicant	<b>Indian Creek Valley Water Authority</b> P. O. Box 486 2086 Indian Head Road Indian Head, PA 15446
Borough or Township	Saltlick Township
County	<b>Fayette</b>
Type of Facility	Grimm Spring Slow Sand Filtration Plant
Consulting Engineer	Bankson Engineers, Inc. 267 Blue Run Road P. O. Box 200 Indianola, PA 15051
Permit to Construct Issued	September 28, 2005

**Permit No. 3097501-A2**, Public Water Supply.

Applicant	<b>Southwestern Pennsylvania Water Authority</b> P. O. Box 187 1442 Jefferson Road Jefferson, PA 15344
Borough or Township	West Bethlehem and East Bethlehem Townships and Marianna Borough
County	<b>Washington</b>
Type of Facility	Water treatment plant
Consulting Engineer	Bankson Engineers, Inc. 267 Blue Run Road P. O. Box 200 Indianola, PA 15051
Permit to Construct Issued	October 6, 2005

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

**Permit No. 4387502-MA2, Minor Amendment**

Applicant **Fredonia Borough**  
 Borough or Township Fredonia Borough  
 County **Mercer**  
 Type of Facility PWS  
 Permit to Construct 10/07/2005  
 Issued

**Operations Permit** issued to **New Wilmington Municipal Authority**, 134 High Street, New Wilmington, PA 16142, PWS ID 6370035, Wilmington Township, **Lawrence County**, on October 5, 2005, for the operation of two bolt-together steel potable water storage tanks, as approved under Construction Permit No. 3704501.

**Operations Permit** issued to **Municipal Authority of the Borough of Conneaut Lake**, P. O. Box 345, Conneaut Lake, PA 16316, PWS ID 6200015, Conneaut Lake Borough, **Crawford County**, on October 7, 2005, for the Innovative Technology Operation of the greensand filtration process for arsenic removal, as approved under Construction Permit No. 2002501.

**WATER ALLOCATIONS**

**Actions taken on applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth**

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

**WA 4-881A. Water Allocation Permit Modification Order.** The Department of Environmental Protection grants **Marion Township, Beaver County** a modification order to be used in accordance with the "Emergency Water Service Agreement" dated November 8, 2004, between Marion Township and the Borough of Zelienople. The Modification Order grants Marion Township the right to purchase an additional 500,000 gallons per day, based on a 30-day average, from the Municipal Authority of the Township of North Sewickley, to meet the essential water use needs of the Borough of Zelienople. Modification Order issued October 7, 2005.

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

**WA56-1003, Water Allocations. Cambria Somerset Authority**, 244 Walnut Street, Somerset, PA 15901, **Cambria County**. The right to withdraw 71 million gallons per day, peak day and 40 million gallons per day, maximum 30-day average, from the Quemahoning Reservoir; 10 million gallons per day, peak day, and 5.2 million gallons per day, maximum 30-day average, from the Hinckston Reservoir; 27 million gallons per day, peak day when available, from the Border Dam Intake; 26 million gallons per day, peak day when available, from the South Fork Intake (Total Maximum Daily withdrawal, from all of the above sources, shall not exceed 91 million gallons, as a daily peak); and 6.3 million gallons per day, peak day, and 5.2 million gallons per day, maximum 30-day average, from the Wilmore Reservoir.

**WA30-587E, Water Allocations. Southwestern Pennsylvania Water Authority**, P. O. Box 187, 1442 Jefferson Road, Jefferson, PA 15344, Greene County. A Modification Order to extend the existing service area of the Authority to include West Bethlehem Township, **Washington County**.

**SEWAGE FACILITIES ACT PLAN APPROVAL**

**Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)**

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

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Jim Thorpe Borough	421 North Street Jim Thorpe, PA 18229	Carbon

*Plan Description:* The approved Plan Update provides for sewer extensions to serve the following areas: Chipmunk Trail, White Lane and Center Avenue in the Western District, and Reservoir Road/Gun Club Road in the Eastern District. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Washington Township	185 Manors Road Elizabethville, PA 17023	Dauphin

*Plan Description:* Approval of a revision to the Official Sewage Plan of Washington Township, Dauphin County. The proposed Walmart Subdivision consists of 5 commercial lots with a sewage flow of 12,230 gpd connected to a new pump station and forcemain tributary to the Elizabethville Wastewater Treatment Plant. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant impacts resulting from this proposal.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Swatara Township	One Supervisor Drive Jonestown, PA 17038	Lebanon

*Plan Description:* Approval of a revision to the Official Sewage Plan of Swatara Township, Lebanon County. The proposed Blatt Property Subdivision consisting of 50 residential lots with a sewage flow of 12,500 gpd connected to a new pump station and forcemain tributary to the Jonestown Wastewater Treatment Plant. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant impacts resulting from this proposal.

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

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Richland Township	4011 Dickey Road Gibsonia, PA 15044	Allegheny

*Plan Description:* The approved plan provides for an extension of the sewer service area to existing residential dwellings that are currently being serviced by onlot sewage systems. The sewage will be treated at the Allegheny Valley Joint Sanitary Authority Sewage Treat-

ment Plant and the Hampton Township Sewage Treatment Plant. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required WQM Permits must be obtained in the name of the municipality.

## **HAZARDOUS SITES CLEANUP UNDER THE ACT OF OCTOBER 18, 1988**

### **Proposed Interim Response**

#### **High Quality Polishing and Plating Site, Upper Milford Township, Lehigh County**

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.101—6020.1305), is proposing an interim response action at the High Quality Polishing and Plating Site (Site). This response will be undertaken under section 505(b) and (c) of the HSCA (35 P. S. § 6020.505(b) and (c)). The Site is located at 6510 Chestnut Street (along routes 100 and 29) in the Village of Zionsville, Upper Milford Township, Lehigh County, PA.

The Site was used as metal polishing and plating facility from 1960 until 1983. The Department completed its Site Characterization Report in April 2001. Trichloroethylene (TCE) has been detected in onsite and offsite monitoring wells and in two residential wells at concentrations above the Maximum Contaminant Level (MCL) or Safe Drinking Water Standards. In addition to TCE, other Site-related contaminants of concern (nickel, lead, copper and zinc) had been detected in surface soil and waste materials above cleanup standards under the Department's Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908). An interim response performed from March to October 2002 involved the removal and proper disposal of hazardous substances found within the former polishing and plating facility, removal of contaminated soil and waste located outside of the building and demolition of the building. This proposed interim response action involves the treatment of onsite groundwater that has been contaminated by Site-related TCE at concentrations greater than the MCL.

The objectives of this proposed interim response is to: 1) prevent exposure to TCE and the other Site-related contaminants of concern through ingestion and dermal contact; and 2) prevent continued leaching of contaminants of concern to groundwater. The Department evaluated several alternatives for this proposed interim response which include:

- 1) No action.
- 2) Monitored natural attenuation.
- 3) Enhanced reductive dechlorination (Bioremediation).
- 4) Chemical oxidation.
- 5) Groundwater extraction and treatment.

Based upon an evaluation of the alternatives using criteria including protection of human health and the environment, compliance with applicable and relevant and appropriate requirements (ARARs), feasibility, permanence and cost effectiveness, the Department has selected alternative 4 as the proposed interim response for the Site.

This notice is being provided under section 506(b) of the HSCA (35 P. S. § 6020.506(b)). The administrative record, which contains the information that forms the basis and

documents the selection of the response action, is available for public review and comment. The administrative record is located at the Upper Milford Township Building, Lehigh County and is available for review Monday through Friday from 8 a.m. to 4 p.m. The administrative record will be open for comment from October 22, 2005, to January 20, 2006. Persons may submit written comments into the record during this time only by sending them to Ronald Schock, Project Officer, Department of Environmental Protection, Bethlehem District Office, 4530 Bath Pike, Bethlehem, PA 18017 or by delivering them to that office in person.

In addition, persons may present oral comments for inclusion in the administrative record at a public hearing. The Department has scheduled the hearing for November 30, 2005, at 7 p.m. at the Upper Milford Township Building. The testimony at the public hearing will be limited to the proposed interim response which involves the treatment of onsite groundwater. An informal public meeting will be held after the public hearing is concluded. Persons wishing to present testimony at the November 30, 2005, hearing regarding this interim response relating the contaminated groundwater should register with Ronald Schock before November 23, 2005, by telephone at (610) 861-2070 or in writing to Ronald Schock at the Department's Bethlehem District Office listed previously. If no person registers to present oral comments by the date specified previously, the hearing will not be held.

Persons with a disability who wish to attend the November 30, 2005, hearing and require auxiliary aid, service or other accommodations to participate in the proceedings should contact Ronald Schock or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

## **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—6026.908).**

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Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property

and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**3-7 Christian St. Marquette**, City of Philadelphia, **Philadelphia County**. Michael Roscoe, Mid-Atlantic Assoc., Inc., 2951 Advance Ln., Colmar, PA 18915 on behalf of Fred Tropea, Stone Creek Homes, LLC, 1786 Wilmington Pike, Suite 300, Glen Mills, PA 19342 has submitted a Final Report concerning remediation of site groundwater contaminated with chlorinated solvents, diesel fuel, No. 6 fuel oil, inorganics, kerosene, leaded gasoline, lead, MTBE, new motor oil, other organics, unleaded gasoline and used motor oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**Christian & Swanson St. Phillyship**, City of Philadelphia, **Philadelphia County**. Michael Roscoe, Mid-Atlantic Assoc., Inc., 2951 Advance Ln., Colmar, PA 18915 on behalf of Fred Tropea, Stone Creek Homes, LLC, 1786 Wilmington Pike, Suite 300, Glen Mills, PA 19342 has submitted a Final Report concerning remediation of site groundwater contaminated with chlorinated solvents, diesel fuel, No. 6 fuel oil, inorganics, kerosene, leaded gasoline, lead, MTBE, new motor oil, other organics, unleaded gasoline and used motor oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**9-15 Christian St. Towing**, City of Philadelphia, **Philadelphia County**. Michael Roscoe, Mid-Atlantic Assoc., Inc., 2951 Advance Ln., Colmar, PA 18915 on behalf of Fred Tropea, Stone Creek Homes, LLC, 1786 Wilmington Pike, Suite 300, Glen Mills, PA 19342 has submitted a Final Report concerning remediation of site groundwater contaminated with chlorinated solvents, diesel fuel, No. 6 fuel oil, inorganics, kerosene, leaded gasoline, lead, MTBE, new motor oil, other organics, unleaded gasoline and used motor oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**830-834 Swanson Salem Limo**, City of Philadelphia, **Philadelphia County**. Michael Roscoe, Mid-Atlantic Assoc., Inc., 2951 Advance Ln., Colmar, PA 18915 on behalf of Fred Tropea, Stone Creek Homes, LLC, 1786 Wilmington Pike, Suite 300, Glen Mills, PA 19342 has submitted a Final Report concerning remediation of site groundwater contaminated with chlorinated solvents, diesel fuel, No. 6 fuel oil, inorganics, kerosene, leaded gasoline, lead, MTBE, new motor oil, other organics, unleaded gasoline and used motor oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**Christian & Swanson St. Warehouse**, City of Philadelphia, **Philadelphia County**. Michael Roscoe, Mid-Atlantic Assoc., Inc., 2951 Advance Ln., Colmar, PA 18915 on behalf of Fred Tropea, Stone Creek Homes, LLC, 1786 Wilmington Pike, Suite 300, Glen Mills, PA 19342 has submitted a Final Report concerning remediation of site groundwater contaminated with chlorinated solvents, diesel fuel, No. 6 fuel oil, inorganics, kerosene, leaded gasoline, lead, MTBE, new motor oil, other organics, unleaded gasoline and used motor oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**Namico Plant**, City of Philadelphia, **Philadelphia County**. Paul Martino, P. G., Pennoni Assoc., Inc., 3001 Market St., Philadelphia, PA 19102 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with inorganics, PAH and other organics. The report is intended to document remediation of the site to meet the Site-Specific Standard.

**Sunoco, Inc. Icedale Term. No. 9000-0080**, West Brandywine Township, **Chester County**. Jennifer L. Huha, GES, 410 Eagleview Boulevard, Suite 110, Exton, PA 19341 on behalf of Bradford Fish, Sunoco, Inc., Post Rd. and Blueball Ave., Marcus Hook, PA 19061 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**863 Easton Partners, LP**, Warrington Township, **Bucks County**. Terrance J. McKenna, P. E., Keating Env. Mgmt., Inc., 123 John Robert Thomas Dr., Exton, PA 19341 on behalf of Philip Hinerman, Esq., Fox Rothschild, LLP, 2000 Market St., 10th Floor, Philadelphia, PA 19103 has submitted a Remedial Investigation Report concerning remediation of site soil and groundwater contaminated with PAH, chlorinated solvents and gasoline. The report is intended to document remediation of the site to meet the Site-Specific Standard.

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

**Gladys Horner Property**, East Saint Clair Township, **Bedford County**. Environmental Products and Services of Vermont, Inc., 5100 Paxton Street, Harrisburg, PA 17111, on behalf of Gladys Horner, 7702 Thor Drive, Annandale, VA 22003-1432, submitted a Final Report concerning remediation of site soils contaminated with No. 2 Fuel Oil. The report is intended to document remediation of the site to the residential Statewide Health Standard.

*Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Beazer Adelaide Site/Former Koppers Wood Treating Facility**, Dunbar Township, **Fayette County**. James S. Zubrow, P. G., Key Environmental Inc., 1200 Arch Street, Suite 200, Carnegie, PA 15106 (on behalf of Kurt Paschl, Beazer East, Inc., c/o Three Rivers Management, Inc., One Oxford Centre, Suite 3000, Pittsburgh, PA 15219) has submitted a Cleanup Plan concerning remediation of site soil and groundwater contaminated with inorganics, other organics and PAHs. The report is intended to document remediation of the site to meet the Site-Specific Standard.

**Fair Oaks Site**, Leet Township, **Allegheny County**. Mary A. King, P. G., Civil & Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh, PA 15205 (on behalf of Robertson-Ceco Corporation, Suite 425, 5000 Executive



Parkway, San Ramon, CA 94583) has submitted a Final Report concerning remediation of site soil and groundwater contaminated with lead, heavy metals, solvents and PAHs. The applicant proposes to remediate the site to meet the Statewide Health and Background Standards.

**Wilkesburg Save-A-Lot**, Wilkesburg Borough, **Allegheny County**. Dennis Guthrie, URS Corporation, 501 Holiday Drive, Suite 300, Pittsburgh, PA 15220 on behalf of Wesley Johnson, Wilkesburg Borough Manager, 713 South Avenue, Wilkesburg, PA 15221 and Fred Ralston, Allegheny County Dept. of Economic Development, 425 Sixth Street, Pittsburgh, PA 15219 has submitted a Remedial Investigation Report, and a Cleanup Plan site soils contaminated with lead and arsenic, and site groundwater contaminated with petroleum compounds (benzene, ethyl-benzene, toluene and xylenes). The applicant proposes to remediate the site to meet the Site-Specific Standard.

**Westinghouse Electric Company Specialty Metals Plant**, Derry Township, **Westmoreland County**. William A. Baughman, Cummings/Riter Consultants, Inc., 10 Duff Road, Suite 500, Pittsburgh PA 15235 (on behalf of Dan Wesolowski, Westinghouse Electric Company, R. D. 4, Box 333, Westinghouse Road, Blairsville, PA 15717) has submitted a Remedial Investigation Report/Focused Risk Assessment Report concerning remediation of site soil and groundwater contaminated with lead, heavy metals, BTEX and solvents. The report is intended to document remediation of the site to meet the Site-Specific Standard.

**BP Site No. 07020**, Ross Township, **Allegheny County**. Heather A. Fazekas, URS Corporation, 501 Holiday Drive, Suite 300 Foster Plaza 4, Pittsburgh, PA 15220 (on behalf of Tony Barcia, 1619 Pin Oak Drive, Pittsburgh, PA 15237, and Richard Blackburn, BP Products North America, Inc., 1 West Pennsylvania Avenue, Suite 440, Towson, MD 21204) has submitted a Remedial Investigation Report/Cleanup Plan concerning remediation of site soil contaminated with waste oil and unleaded gasoline. The report is 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—6026.908).**

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the

act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**Rivercrest Masters Dev.**, Upper Providence Township, **Montgomery County**. John R. Ross, P. E., The H & K Group, P. O. Box 196, 2052 Lucon Rd., Skippack, PA 19474 on behalf of Toll Brothers, Inc. has submitted a Low-Risk Property Final Report concerning the remediation of site soil contaminated with diesel fuel oil. The Low-Risk Property Final Report was approved by the Department on October 4, 2005.

**French Creek Ctr./East**, Phoenixville Borough, **Chester County**. Charlene Drake, React Env. Professional Svc. Group, Inc., 6901 Kingsessing Ave., P. O. Box 33342, Philadelphia, PA 19142 on behalf of Phoenix Prop. Group, The Delta Org., Inc., 72 E. Swedesford Rd., Suite 214, Malvern, PA 19355 has submitted a Remedial Investigation Report and Cleanup Plan concerning the remediation of site soil, groundwater and surface water contaminated with PCBs, lead, heavy metals, BTEX, petroleum hydrocarbons, polycyclic aromatic hydrocarbons and solvents. The Remedial Investigation Report and Cleanup Plan were approved by the Department on September 29, 2005.

**Ashland, Inc.**, Conshohocken Borough, **Montgomery County**. David J. Kistner, P. G., URS Corp., 335 Commerce Dr., Suite 300, Ft. Washington, PA 19034 on behalf of H. Morgan Smith, Colwell Prop., LLC, 201 E. Elm St., Conshohocken, PA 19428 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with chlorinated solvents. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on September 28, 2005.

**5129 Market St. Prop.**, City of Philadelphia, **Philadelphia County**. Donald Coleman, Penn E & R, 2755 Bergey Rd., Hatfield, PA 19440 on behalf of has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with leaded gasoline and MTBE. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on August 9, 2005.

**Sharswood Phase II**, City of Philadelphia, **Philadelphia County**. Charlene Drake, REACT Env. Svc., Inc., 6901 Kingsessing Ave., Philadelphia, PA 191425 on behalf of Bruce Houston, Sharswood II Assoc., LP, Stow Rd., P. O. Box 994, Marlton, NJ 08053 has submitted a Remedial Investigation Report and Cleanup Plan concerning the remediation of site soil contaminated with lead and PAH. The Remedial Investigation Report and Cleanup Plan were approved by the Department on September 30, 2005.

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

**PPL Carlisle Manufactured Gas Plant 43**, Carlisle Borough, **Cumberland County**. Langan Engineering & Environmental Services, 30 South 17th Street, Suite 1500, Philadelphia, PA 19103, on behalf of PPL Corporation, GENA2-4, Two North Ninth Street, Allentown, PA 18101-1179 and UGI Utilities, 100 Kachel Boulevard, Reading, PA 19612, submitted a Risk Assessment Report/Cleanup Plan concerning remediation of site soils and groundwater contaminated with lead, heavy metals, solvents, BTEX and PAHs. The applicant is seeking to demonstrate attainment of a combination of the Statewide Health and Site Specific Standards. The Risk Assessment Report and Cleanup Plan were approved by the Department on October 3, 2005.

**Former Aumiller's Cameron Street Body Shop**, City of Harrisburg, **Dauphin County**. BL Companies, 830 Sir Thomas Court, Harrisburg, PA 17109, on behalf of Ruth Ann Krug, 1400 Montfort Drive, Harrisburg, PA 17110 and Howard Henry, Howard Tire Company, Inc., 3103 Walnut Street, Harrisburg, PA 17109, submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil. The final report demonstrated attainment of the residential Statewide Health Standard, and was approved by the Department on October 6, 2005.

**Defense Depot Susquehanna PA**, Fairview Township, **York County**. Defense Distribution Susquehanna PA, 2001 Mission Drive, New Cumberland, PA 17070 submitted a Final Report concerning the remediation of site soils and groundwater contaminated with carbon tetrachloride, benzene and 1,2-dichloroethane. The final report demonstrated attainment of the Site Specific Standard and was approved by the Department on October 6, 2005.

*Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Babe Charapp Ford, Inc. (Pro Bowl Ford, Inc.)**, City of McKeesport **Allegheny County**. Gary Toplak, P. E., Toplak & Associates, 112 Pineview Road, Baden, PA 15005 on behalf of Ronald M. Charapp, Eden Park Associates, LLC, P. O. Box 189, Freeport, PA 16229 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with metals, VOCs and semivolatile organics. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on September 26, 2005.

**Charapp Ford South, Inc. (South Village Ford, Inc.)**, Peters Township **Washington County**. Gary Toplak, P. E., Toplak & Associates, 112 Pineview Road, Baden, PA 15005 on behalf of Gregory J. and Lois D. Heath, 101 Colony Circle, McMurray, PA 15317 has submitted a Final Report concerning the remediation of site soil contaminated with VOCs and PAHs. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on September 23, 2006.

#### HAZARDOUS WASTE TRANSPORTER LICENSE

**Actions on applications for Hazardous Waste Transporter License received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

*Hazardous Waste Transporter License Issued*

**USFilter Transport, Inc.**, 1657 Commerce Drive, Suite 10B, South Bend, IN 46628. License No. PA-AH 0722. Effective October 4, 2005.

*Hazardous Waste Transporter License Renewed*

**Vexor Technology, Inc.**, 955 W. Smith Road, Medina, OH 44256. License No. PA-AH 0685. Effective September 6, 2005.

**RSO, Inc.**, P. O. Box 1450, Laurel, MD 20725-1450. License No. PA-AH 0578. Effective September 12, 2005.

**Onyx Environmental Services, LLC**, 1 Eden Lane, Flanders, NJ 07836. License No. PA-AH 0500. Effective September 12, 2005.

**Miller Environmental Group, Inc.**, 538 Edwards Avenue, Calverton, NY 11933. License No. PA-AH 0501. Effective September 15, 2005.

**Lacy's Express, Inc.**, P. O. Box 130, Pedricktown, NJ 08067. License No. PA-AH 0243. Effective September 28, 2005.

**Republic Services of South Carolina, LLC**, P. O. Box 62679, N. Charleston, SC 29419. License No. PA-AH0542. Effective October 6, 2005.

**Robbie D. Wood, Inc.**, P. O. Box 125, Dolomite, AL 35061. License No. PA-AH 0504. Effective October 4, 2005.

**Heritage Transport, LLC**, 7901 W. Morris Street, Indianapolis, IN 46231. License No. PA-AH 0200. Effective October 4, 2005.

#### INFECTIOUS AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSE

**Actions on applications for Infectious and Chemotherapeutic Waste Transporter License received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6) and regulations to transport infectious and chemotherapeutic waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

*Infectious and Chemotherapeutic Waste Transporter License Renewed*

**Geisinger System Services**, 100 North Academy Avenue, Danville, PA 17822-1540. License No. PA-HC 0141. Effective September 19, 2005.

**Clean Harbors Environmental Services, Inc.**, P. O. Box 859048, Braintree, MA 02184. License No. PA-HC 0053. Effective September 19, 2005.

**Altoona Regional Health System**, 620 Howard Avenue, Altoona, PA 16601-4819. License No. PA-HC 0124. Effective September 21, 2005.

*Infectious and Chemotherapeutic Waste Transporter License Voluntarily Terminated*

**Med-Trac, Inc.**, 715 Willaim Pitt Highway, Pittsburgh, PA 15238. License No. PA-HC 0086. Effective October 1, 2005.

### REGISTRATION FOR GENERAL PERMIT—RESIDUAL WASTE

**Registration approved under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Residual Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and residual waste regulations for a general permit to operate residual waste processing facilities and/or the beneficial use of residual waste other than coal ash.**

*Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.*

**General Permit Registration No. WMGR011R017.** MARPAC Corp., P. O. Box 84, Grove City, PA 16127. Registration to operate under General Permit No. WMGR011 for processing in mobile units of spent glycol base antifreeze to be beneficially used as reconditioned antifreeze. The approved processing is limited to precipitation, pH adjustment, solids removal (including filtration or reverse osmosis), and the addition of chemical additives. The registration was issued by Central Office on October 7, 2005.

Persons interested in reviewing the general permit should contact Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department of Environmental Protection through the Pennsylvania Relay Service, (800) 654-5984.

### DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

**Determination of Applicability for General Permit Issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and residual waste regulations for a General Permit to operate residual waste processing facilities and/or the beneficial use of residual waste other than coal ash.**

*Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.*

**General Permit No. WMGR081D003. Envirocycle Inc.**, P. O. Box 899, Hallstead, PA18822-0899. For the recycling of various uncontaminated and source-separated electronic equipment and components electronics equipment by sorting, disassembling and mechanical process-

ing (by sizing, shaping, separating and volume reduction only). The Department of Environmental Protection approved the determination of applicability on September 30, 2005.

Persons interested in reviewing the general permit may contact the Beneficial Use/General Permits Section, Division of Municipal and Residual Waste, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

**General Permit No. WMGR085D001. Hazleton Creek Properties, LLC**, P. O. Box 1389, 580 Third Avenue, Kingston, PA 18704. General Permit No. WMGR085D001 authorizes processing and beneficial use of freshwater, brackish and marine dredged material, cement kiln dust, lime kiln dust, coal ash, and cogeneration ash in mine reclamation. The Department issued the determination of applicability on October 5, 2005.

Persons interested in reviewing the general permit should contact Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Permit issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.**

*Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.*

**Permit No. 101631. The Eldredge Companies, Inc.**, 898 Fernhill Rd., West Chester, PA 19380-4202, West Goshen Township, **Chester County**. C & D Transfer Station permit renewed for a new 10-year term. The permit was issued by the Southeast Regional Office on September 29, 2005.

### AIR QUALITY

**General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**GP3-06-05104: HB Mellott Estate, Inc.** (100 Mellott Drive, Suite 100, Warfordsburg, PA 17267) on October 3, 2005, for a Portable Nonmetallic Mineral Processing Plant under GP3 in Maiden Creek Township, **Berks County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; George Monasky, New Source Review Chief, (814) 332-6940.*

**GP-27-032: PA General Energy** (208 Liberty Street, Warren, PA 16365) on October 31, 2005, to operate natural gas fired compressor engines in Jenks Township, **Forest County**.

**Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**54-303-016A: Haines and Kibblehouse, Inc.—Foster Materials** (1371 West Street Road, Warminster, PA 18974) on September 19, 2005, to construct a batch asphalt plant and associated air cleaning device at their facility in Foster Township, **Schuylkill County**.

**39-318-113: Oak Street USA, LLC** (1949 South 5th Street, Allentown, PA 18103) on October 3, 2005, to construct three paint spray booths and associated air cleaning devices at their facility in Allentown, **Lehigh County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**01-05022B: Knouse Foods Cooperative, Inc.** (P. O. Box 807, Biglerville, PA 17307) on October 4, 2005, to replace a 23.9 mmBtu/hr boiler with a new 29.5 mmBtu/hr boiler at their Orrtanna fruit processing facility in Hamilton Township, **Adams County**.

**36-03155: L and S Sweeteners** (388 East Main Street, Leola, PA 17540-1925) on October 3, 2005, to use treated landfill gas in two facility boilers in West Earl Township, **Lancaster County**.

**67-05005C: PPL Brunner Island, LLC** (2 North 9th Street, Allentown, PA 18101-1139) on October 3, 2005, to replace an existing electrostatic precipitator (ESP) with a new ESP to enhance the collection of particulate matter emissions from the Unit No. 3 coal-fired boiler in East Manchester Township, **York County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; George Monasky, New Source Review Chief, (814) 332-6940.*

**61-011C: Merisol Antioxidants, LLC** (292 SR 8, Oil City PA 16301) on September 30, 2005, to modify distillation columns, add a new column, modify the flare and additional ancillary modifications for the Meta Expansion Project in Cornplanter Township, **Venango County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 685-7584.*

**AMS 05124: Sunoco, Inc.—R and M** (3144 Passyunk Avenue, Philadelphia, PA 19145) on October 4, 2005, to replace a 60 mmBtu/hr heater with another heater of the same size in the City of Philadelphia, **Philadelphia County**.

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**46-0041C: Smurfit-Stone Container Enterprises, Inc.** (1035 Longford Road, Phoenixville, PA 19460) on October 4, 2005, to operate a flexographic printing press in Upper Providence Township, **Montgomery County**.

**46-0112A: Palmer International, Inc.** (P. O. Box 315, Skippack, PA 19474) on October 4, 2005, to operate four liquid resin process equipment in Skippack Township, **Montgomery County**.

**09-0015F: Rohm and Haas Co.** (200 Route 413, Bristol, PA 19007) on October 5, 2005, to modify from five boilers to four boilers in Bristol Township, **Bucks County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**06-05007B: Carpenter Technology Corp.** (P. O. Box 14662, Reading, PA 19612-4662) on October 5, 2005, to modify a VIM furnace controlled by a fabric collector at their facility in the City of Reading, **Berks County**. This plan approval was extended.

**22-05003A: Stroehmann Bakeries, LC** (3996 Paxton Street, Harrisburg, PA 17111) on October 3, 2005, to replace a catalytic oxidizer which controls VOC emissions from the ovens at their Capitol Bakery in Swatara Township, **Dauphin County**. This plan approval was extended.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**08-00003A: CraftMaster Manufacturing, Inc.** (P. O. Box 311, Shiner Road, Towanda, PA 18848) on October 3, 2005, to operate the trim surface coating operation and air cleaning devices (two cyclonic separators and two fabric collectors) identified in the respective plan approval on a temporary basis until January 31, 2006, at their facility in Wysox Township, **Bradford County**.

**55-399-005A: Professional Building Systems** (72 East Market Street, Middleburg, PA 17842) on September 1, 2005, to construct and operate their modular home manufacturing facility in the Borough of Middleburg, **Snyder County**. The plan approval has been extended until December 29, 2005.

**59-00005E: Dominion Transmission Corp.** (625 Liberty Avenue, Pittsburgh, PA 15222) on October 4, 2005, to operate a 2,000 horsepower natural gas-fired reciprocating internal combustion compressor engine (Engine 6) on a temporary basis until February 1, 2006, at their Sabinsville Compressor Station in Clymer Township, **Tioga County**. The plan approval has been extended.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; George Monasky, New Source Review Chief, (814) 332-6940.*

**10-345A: Allegheny Mineral Corp.—Murrinsville Quarry** (102 VanDyke Road, Harrisville, PA 16038) on September 27, 2005, to install a Limestone Processing Facility in conjunction with their new Limestone Mining Operation in Marion Township, **Butler County**.

**24-083D: Carbone of America—Graphite Materials Division** (215 Stackpole Street, St. Marys, PA 15857) on October 31, 2005, to construct a CBH Kiln in Benzinger Township, **Elk County**.

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**Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**23-00045: Sunoco Partners Marketing and Terminal, LP** (1801 Market Street, 3/10 PC, Philadelphia, PA 19103) on October 4, 2005, for renewal of the facility Title V Operating Permit in Upper Chichester Township, **Delaware County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**32-00065: Specialty Tires of America, Inc.** (1600 Washington St., Indiana, PA 15701-2893) on September 26, 2005, to operate their plant in Indiana Borough, **Indiana County**. The facility's major source of emissions include: Steam Boiler, Undertread Cementing, Tread End Cementing, Green Tire Building, Other Solvent Usage, Jetzone Pellet Dryer, Banbury Mixers, Tire Buffers, Carbon Black Transfer Station and Plant Space Heaters. This is a Title V renewal.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**24-00123: Onyx Greentree Landfill, LLC** (635 Toby Road, Kersey, PA 15846) on October 6, 2005, to re-issue the Title V Operating Permit to operate a landfill in Fox Township, **Elk County**. As a result of potential emissions of NOx and VOC, the facility is not a major source, and is therefore not subject to Reasonable Available Control Technology. The issued renewal Title V Operating Permit does not reflect any changes in air emission from the facility. The facility is subject to Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The facility is not subject to Compliance Assurance Monitoring under 40 CFR Part 64.

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**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

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*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**17-00054: Forcey Coal, Inc.** (P. O. Box 225, Madera, PA 17830) on September 23, 2005, to issue a State-only operating permit for their coal processing facility in Bigler Township, **Clearfield County**. The facilities sources includes one coal crusher with integral screener and two belt conveyors, one secondary impact crusher/screener powered by a diesel-fired engine, one screener powered by a gasoline-fired engine. The State-only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and report conditions.

**49-00051: Norka Manufacturing, Inc.** (103 East 5th Street, Watsonstown, PA 17777) on September 23, 2005, to issue a State-only operating permit for their wood furniture manufacturing facility in Watsonstown Borough, **Northumberland County**. The facility's main source includes: two spray paint booths and seven dip tanks. The State-only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**14-00032: Glenn O. Hawbaker, Inc.** (711 East College Avenue, Bellefonte, PA 16823-6854) on September 6, 2005, to operate a stone crushing and screening plant (Pleasant Gap Wash Plant, Plant No. 11) in Spring Township, **Centre County**.

**49-00040: Reagent Chemical and Research, Inc.** (R. R. 1, Box 827, Coal Township, PA 17866) on September 6, 2005, to operate a skeet target manufacturing facility in Coal Township, **Northumberland County**.

**55-00006: Philips Products Co.** (499 West Sassafras Street, Selinsgrove, PA 17870) on September 13, 2005, to operate a modular home window and door manufacturing facility in Penn Township, **Snyder County**.

**59-00016: Pine Hill, Inc.** (Box 62, Blossburg, PA 16912) on September 13, 2005, to operate a residual waste (foundry waste) landfill in Ward Township, **Tioga County**.

**17-00021: West Branch Area School District** (356 Allport Cutoff, Morrisdale, PA 16858) on September 13, 2005, to operate a junior/senior high school in Morris Township, **Clearfield County**.

**41-00065: Fisher Mining Co.** (40 Choate Circle, Montoursville, PA 17754) on September 20, 2005, to operate a coal preparation facility at their Thomas Site in Pine Township, **Lycoming County**.

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**Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.**

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*Southcentral Region: Air Quality Program, 909 Ellmerton Avenue, Harrisburg, PA 17110; Ronald Davis, New Source Review Chief, (717) 705-4702.*

**22-03052: Harman Stove Co.** (353 Mountain Road, Halifax, PA 17032-9531) on October 4, 2005, to construct two paint booths for a stove coating operation in Jackson Township, **Dauphin County**. This Operating permit was administratively amended to incorporate plan approval 22-03052B. This is revision No. 1.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**12-00009: Fansteel American Sintered Technologies** (P. O. Box 149 Emporium, PA 15834) on September 22, 2005, to revise the metallic lubricant content of Source ID P101 to a maximum blend of 0.4% zinc stearate and 0.4% lithium stearate and the particulate matter emission limitations shall not exceed 0.15 lb/hr in **Cameron County**. The organic lubricant limitation was increased from 0.75% to 1.0% Acrawax by weight for Source ID P108. An administrative amendment to incorporate a change of ownership from American Sintered Technologies, Inc. to Fansteel American Sintered Technologies. The State-only operating permit will expire on July 31, 2007. The revised State-only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**03-00076: Dominion Peoples** (1201 East 55th Street, Main Building, Cleveland, Ohio 44103) on October 3, 2005, to amend the contact information on the permit

assigned to Girty Compressor Station in South Bend Township, **Armstrong County**. This is a Title V facility.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**24-00131: SGL Carbon Corp.** (900 Theresia Street, P. O. Box 1030, St. Marys, PA 15857) on September 30, 2005, the Department Administratively Amended the Title V Operating Permit for their St. Marys Plant, in St. Marys Borough, **Elk County**. The permit is being amended to account for changes authorized by Plan Approval Number 24-0131I.

## ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

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

### Coal Permits Actions

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

**32990108 and NPDES No. PA0235130. KMP Associates, Inc.,** 1094 Lantz Road, Avonmore, PA 15618-1241, permit renewal for the continued operation and restoration of a bituminous surface mine in Young Township, **Indiana County**, affecting 54.0 acres. Receiving streams: UNTs to Whisky Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received June 8, 2005. Permit issued September 29, 2005.

**56703124 and NPDES No. PA0608114. Diamond T. Coal Company,** P. O. Box 260, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface-auger mine in Stonycreek Township, **Somerset County**, affecting 568.5 acres. Receiving streams: Lamberts Run, a tributary to Stonycreek classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Hooversville Water Authority. Application received August 9, 2005. Permit issued October 4, 2005.

**56000104 and NPDES No. PA0235270. PBS Coals, Inc.,** P. O. Box 260, Friedens, PA 15541, permit renewal for the continued operation and restoration of a bituminous surface-auger mine in Brothersvalley Township, **Somerset County**, affecting 147.2 acres. Receiving streams: UNTs to Tubs Run and Tubs Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received August 9, 2005. Permit issued October 5, 2005.

**56823033 and NPDES Permit No. PA0607541. Croner, Inc.,** P. O. Box 260, Friedens, PA 15541, permit revision—land use change on Leon and Dorothy Paul and John H. and Gwen T. Hartman property from forestland to cropland in Brothersvalley Township, **Somerset County**, affecting 2.1 acres. Receiving streams: UNTs to/and Blue Lick Creek, and UNTs to/and Swamp creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received on July 11, 2005. Permit issued October 5, 2005.

**56960110 and NPDES Permit No. PA0234281. PBS Coals, Inc.,** P. O. Box 260, Friedens, PA 15541, permit revision -two land use changes on John H. and Gwen T. Hartman property from forestland and pasture to cropland; cropland and pastureland to forestland in Brothersvalley Township, **Somerset County**, affecting 25.4 acres. Receiving streams: UNTs to/and Blue Lick creek, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received on July 12, 2005. Permit issued October 5, 2005.

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

**30830701 and NPDES Permit No. PA0214124, Consolidation Coal Company** (R. D. 4, Box 425, Moundsville, WV 26041), to revise the permit for the Dilworth Rock Disposal Area in Cumberland Township, **Greene County** and related NPDES permit. No additional discharges. Permit issued October 5, 2005

**32753702 and NPDES Permit No. NA, EME Homer City Generation, LP** (1750 Power Plant Road, Homer City, PA 15748-8009), to renew the permit for the Homer city Coal Refuse Disposal Site in Center Township, **Indiana County** and related NPDES permit. No additional discharges. Permit issued October 5, 2005.

**32981301. NPDES Permit No. PA0215180, RoxCOAL, Inc.** (P. O. Box 149, Friedens, PA 15541), to renew the permit for the North Branch Mine in Green Township, **Indiana County** and related NPDES permit. No additional discharges. Permit issued October 6, 2005.

*Greensburg District Mining Office: Armbrust Building, R. R. 2, Box 603C, Greensburg, PA 15601-0982, (724) 925-5500.*

**65020104 and NPDES Permit No. PA0250252. Robbie Coal and Fuel, Inc.** (1159 University Drive, Dunbar, PA 15431). Revision to include blasting activities for an existing bituminous surface mine, located in East Huntingdon, **Westmoreland County**, affecting 25.1 acres. Receiving stream: UNT to Buffalo Run. Revision application received: August 4, 2005. Permit issued: October 5, 2005.

**02860201 and NPDES Permit No. PA0588407. Minerals Technology, Inc.** (100 High Tower Blvd., Suite 301, Pittsburgh, PA 15205). Revision to add passive treatment for the water handling plan to a coal refuse reprocessing surface mine, located in Harmar Township, **Allegheny County**, affecting 156.6 acres. Receiving stream: Guys Run. Revision application received: May 9, 2005. Permit issued: October 5, 2005.

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

**54850101R4 and NPDES Permit No. PA0614424. Gilberton Coal Company** (10 Gilberton Road, Gilberton, PA 17934), renewal of an existing anthracite surface mine operation and NPDES Permit for discharge

of treated mine drainage in Mahanoy Township, **Schuylkill County** affecting 61.0 acres, receiving stream: Mahanoy Creek. Application received January 7, 2005. Renewal issued October 5, 2005.

*Noncoal Permits Actions*

*Greensburg District Mining Office: Armbrust Building, R. R. 2, Box 603C, Greensburg, PA 15601-0982, (724) 925-5500.*

**26052803. T & B Excavating** (3336 Old McClellandtown Road, McClellandtown, PA 15458). Commencement, operation and reclamation of a small noncoal surface mine, located in Nicholson Township, **Fayette County**, affecting 6 acres. Receiving stream: UNT to York Run. Application received: April 4, 2005. Permit issued: October 4, 2005.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 9621-3118.*

**64052806. Victor Lupo** (47 Hawkins Road, Ninveh, NY 13813), commencement, operation and restoration of a quarry operation in Buckingham Township, **Wayne County** affecting 5.0 acres, receiving stream: none. Application received July 22, 2005. Permit issued October 3, 2005.

**28052801. Eagle Mountain Lumber Company** (P. O. Box 407, Fannettsburg, PA 17221), commencement, operation and restoration of a quarry operation in Metal Township, **Franklin County** affecting 5.0 acres, receiving stream: none. Application received July 25, 2005. Permit issued October 5, 2005.

**50050804. Harry F. Fahnestock** (794 S. 4th Street, Newport, PA 17047), commencement, operation and restoration of a quarry operation in Oliver Township, **Perry County** affecting 5.0 acres, receiving stream: none. Application received June 14, 2005. Permit issued October 5, 2005.

**58050819. Thomas C. Cramer, Jr. and Donald A. O'Dell** (R. R. 1 Box 161T, Uniondale, PA 18470), commencement, operation and restoration of a quarry operation in New Milford Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received May 2, 2005. Permit issued October 5, 2005.

**58050825. Gerald R. and Gerald R. Pennay, Jr.** (R. R. 2 Box 16, Kingsley, PA 18826), commencement, operation and restoration of a quarry operation in Brooklyn Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received May 18, 2005. Permit issued October 5, 2005.

**58052804. Darwin R. Greene** (R. R. 3 Box 219B, Susquehanna, PA 18847), commencement, operation and restoration of a quarry operation in Harmony Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received June 28, 2005. Permit issued October 5, 2005.

**06960301T. Lehigh Cement Company** (537 Evansville Road, Fleetwood, PA 19522), transfer of an existing quarry operation in Oley Township, **Berks County** affecting 160.81 acres, receiving stream: none. Application received April 13, 2004. Transfer issued October 6, 2005.

**7775SM3T2 and NPDES Permit No. PA0594679. Lehigh Cement Company** (537 Evansville Road, Fleetwood, PA 19522), transfer of an existing quarry operation and renewal of NPDES Permit for discharge of treated mine drainage in Richmond and Maxatawny Townships, **Berks County** affecting 202.08 acres, receiving stream:

UNT to Moselem Creek. Application received April 13, 2004. Transfer issued October 6, 2005.

**7775SM4T2 and NPDES Permit No. PA0594563. Lehigh Cement Company** (537 Evansville Road, Fleetwood, PA 19522), transfer of an existing quarry operation and renewal of NPDES Permit for discharge of treated mine drainage in Oley Township, **Berks County** affecting 180.19 acres, receiving stream: UNT to Manatawny Creek. Applications received April 13, 2004 and April 14, 2005. Transfer and renewal issued October 6, 2005.

**7775SM5T2 and NPDES Permit No. PA0594954. Lehigh Cement Company** (537 Evansville Road, Fleetwood, PA 19522), transfer of an existing quarry operation and renewal of NPDES Permit for discharge of treated mine drainage in Oley Township, **Berks County** affecting 91.04 acres, receiving stream: Limekiln Creek. Application received April 13, 2004. Transfer issued October 6, 2005.

**7775SM10T2 and NPDES Permit No. PA0011789. Lehigh Cement Company** (537 Evansville Road, Fleetwood, PA 19522), transfer of an existing quarry operation and renewal of NPDES Permit for discharge of treated mine drainage in Maidencreek Township, **Berks County** affecting 329.92 acres, receiving stream: Maiden Creek. Applications received April 13, 2004 and August 7, 2003. Transfer and renewal issued October 6, 2005.

**ACTIONS ON BLASTING ACTIVITY APPLICATIONS**

**Actions on applications under the Explosives Acts of 1937 and 1957 (73 P.S. §§ 151–161) 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.**

*Greensburg District Mining Office: Armbrust Building, R. R. 2, Box 603C, Greensburg, PA 15601-0982, (724) 925-5500.*

**26054002. Charles L. Swenglich & Sons Coal Co., Inc.** (86 Swenglich Lane, Smithfield, PA 15478). Blasting activity permit for reclamation at the GFCC 2 Site, located in Georges and Springhill Townships, **Fayette County**, with an expected duration of 5 years. Permit issued: October 4, 2005.

**26054010. Charles L. Swenglich & Sons Coal Co., Inc.** (86 Swenglich Lane, Smithfield, PA 15478). Blasting activity permit for reclamation at the GFCC 3 Site, located in Springhill Township, **Fayette County**, with an expected duration of 5 years. Permit issued: October 4, 2005.

**65054006. Bedrock Mines, LP** (101 Emerson Avenue, Pittsburgh, PA 15215). Blasting activity permit for reclamation at the Marco GFCC, located in Washington Township, **Westmoreland County**, with an expected duration of 1 year. Permit issued: October 6, 2005.

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

**09054112. Allan A. Myers, Inc.** (P. O. Box 98, Worcester, PA 19490), construction blasting for Heritage Creek in Warwick Township, **Bucks County** with an expiration date of December 31, 2006. Permit issued October 3, 2005.

**09054113. Rock Work, Inc.** (1257 DeKalb Pike, Blue Bell, PA 19422), construction blasting for Gouddy Resi-



dence in West Rockhill Township, **Bucks County** with an expiration date of October 1, 2006. Permit issued October 3, 2005.

**21054167. Brubacher Excavating, Inc.** (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Carmella on Woods in Silver Spring Township, **Cumberland County** with an expiration date of December 31, 2006. Permit issued October 3, 2005.

**21054168. John W. Gleim, Jr., Inc.** (625 Hamilton Street, Carlisle, PA 17013), construction blasting for Excel Logistics in Carlisle Borough, **Cumberland County** with an expiration date of April 15, 2006. Permit issued October 3, 2005.

**28054156. David H. Martin Excavating, Inc.** (4961 Cumberland Highway, Chambersburg, PA 17201), construction blasting for Sunset Townhouses in Greene Township, **Franklin County** with an expiration date of September 26, 2005. Permit issued October 3, 2005.

**28054157. David H. Martin Excavating, Inc.** (4961 Cumberland Highway, Chambersburg, PA 17201), construction blasting for Chambersburg Tractor Supply Co. in Guilford Township, **Franklin County** with an expiration date of September 26, 2005. Permit issued October 3, 2005.

**45054143. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting for Joe Squires Storage Project in Middle Smithfield Township, **Monroe County** with an expiration date of September 27, 2006. Permit issued October 3, 2005.

**45054145. Hayduk Enterprises** (P. O. Box 554, Dalton, PA 18414), construction blasting for a dental office in Smithfield Township, **Monroe County** with an expiration date of December 31, 2005. Permit issued October 3, 2005.

**64054112. Hayduk Enterprises** (P. O. Box 554, Dalton, PA 18414), construction blasting for a home in Lake Township, **Wayne County** with an expiration date of December 31, 2005. Permit issued October 3, 2005.

**67054141. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for Equilibrium II in Fairview Township, **York County** with an expiration date of October 30, 2006. Permit issued October 3, 2005.

**15054006. Explo-Craft, Inc.** (P. O. Box 1332, West Chester, PA 19380), construction blasting at Green Ridge Subdivision in Upper Uwchlan Township, **Chester County** with an expiration date of December 31, 2005. Permit issued October 4, 2005.

**22054006. ABEL Construction Co., Inc.** (P. O. Box 476, Mountville, PA 17554), construction blasting at Deer Run Phase V Subdivision in Derry Township, **Dauphin County** with an expiration date of November 1, 2006. Permit issued October 4, 2005.

**67054140. Brubacher Excavating, Inc.** (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Quentin Meadows in Carroll Township, **York County** with an expiration date of December 31, 2006. Permit issued October 6, 2005.

**09054014. Eastern Blasting Co., Inc.** (1292 Street Road, New Hope, PA 18938), construction blasting at The Ridings of Warwick in Warwick Township, **Bucks County** with an expiration date of August 31, 2006. Permit issued October 7, 2005.

## FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

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

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

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

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**Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).**

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*Permits, Environmental Assessments and 401 Water Quality Certifications Issued*

### WATER OBSTRUCTIONS AND ENCROACHMENTS

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

**E15-741. Kelly Group**, 63 Chestnut Road, Paoli, PA 19301, West Goshen Township, **Chester County**, ACOE Philadelphia District.

To authorize the following water obstruction and encroachment activities associated with the Shadeland Woods Residential Subdivision. Activities 1 and 2 were previously constructed without a permit and this authorization will bring this project into compliance.



The site is located approximately 500 feet southwest of the intersection of Boot Road and Phoenixville Pike (Malvern, PA, USGS Quadrangle N: 1.5 inches, W: 13.0 inches).

1. To maintain 94 linear feet of 10-foot by 6-foot precast concrete box culvert and associated fill in and along East Branch of Chester Creek (TSF) and associated floodplain to accommodate the access road to the Shadeland Woods Subdivision. Work also includes maintenance of the 8-inch sanitary sewer line, 8-inch water line, 18-inch storm pipe along with electric, telephone and cable conduits under the aforementioned culvert.

2. To maintain an 18-inch stormwater outfall structure situated along the East Branch of Chester Creek located adjacent to the downstream endwall of the aforementioned box culvert.

3. The permittee also agrees to perform streambank enhancement along the East Branch of Chester Creek located on the adjacent property downstream from aforementioned culvert at 1261 Knollwood Drive. This activity will be authorized under General Permit GP031505315. The permittee (Kelly Group) is responsible for assuring that the work is done in accordance with the conditions of the General Permit BDWW-GP-3 and the information that was submitted to the Department.

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**E36-798: Aaron E. Fisher**, 207 East Eby Road, Leola, PA 17540 in West Lampeter Township, **Lancaster County**, ACOE Baltimore District.

To construct and maintain a 24' x 20' bridge over a UNT of Big Spring Run (WWF) for farm equipment access in West Lampeter Township, Lancaster County.

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

**E08-424. Department of Transportation, Engineering District 3-0**, P. O. Box 218, Montoursville, PA 17754-0218. Bridge Replacement, SR 06 Section 100 in Standing Stone Township, **Bradford County**, ACOE Baltimore District (Rome, PA Quadrangle N: 1.81 inches, W: 2.13 inches).

1) to remove an enclosed 8-foot 6-inch wide by 7-foot 8-inch high arch culvert with a waterway opening of 60 square feet; and 2) to replace and maintain the following drainage area culvert pipes:

Drainage Feature	Location (Station Number)		Drainage Area (Acre)	Size & Type		Length (Ft)	
	Existing	Proposed		Existing	Proposed	Existing	Proposed
P4	216+69.38	216+75.00	46.7	24" φRCP	30" φRCP	43	80.3
P9	243+13.27	243+10.00	24.9	18" φRCP	21" φRCP	21.0	68.2
P10	244+63.16	244+63.00	9.7	15" φRCP	18" φRCP	52.6	64.2
P11	247+28.26	247+28.00	12.8	18" φRCP	18" φRCP	52.0	62.1
P12	249+59.16	249+50.00	14.7	18" φRCP	18" φRCP	54.4	56.2
P16	6+80.31	6+78.00	51.3	CMP	30" φRCP	36.8	60.3
Culvert	236+02.79	235+79.40	1702.4	7.5' Arch	10'x9' Box	95.7	154.9

Drainage Feature	Length of Proposed Impact to Waters of the U. S. (Ft)		Remarks	Latitude	Longitude
	Permanent	Temporary			
P4	37.3	167.6	Replace Pipe: temporary impact due to ditch relocation (from pond outlet to pipe inlet)	41°45'36.7" N	76°21'57.4" W
P9	47.2	4.3	Replace Pipe	41°45'32.8" N	76°21'27.3" W
P10	11.6	5.9	Replace Pipe	41°45'31.7" N	76°21'26.3" W
P11	10.1	12.8	Replace Pipe	41°45'29.2" N	76°21'22.0" W
P12	38.1	43.1	Replace Pipe: permanent impact includes fill in drainage swale (36.3 ft. at pipe inlet)	41°45'28.1" N	76°21'20.3" W
P16	23.5	53.1	Replace Pipe (on Goff Road)	41°45'35.7" N	76°21'33.0" W
Culvert	59.2	199.4	Replace Culvert (over Vought Creek)	41°45'35.4" N	76°21'56.5" W

The project will temporarily impact about 3,000 square feet of wetlands while impacting about 546 feet of waterway and about 0.4 acre of earth disturbance. The impacted streams are WWF streams.

**E08-425. Department of Transportation, District 3-0**, P. O. Box 218, Montoursville, PA 17754. Culvert Replacement in Athens Township, **Bradford County**, ACOE Baltimore District (Sayre, PA Quadrangle N: 8.45 inches; W: 14.65 inches).

1) To remove the existing 7-foot by 4.5-foot CMP arch culvert; and 2) to construct a precast concrete box culvert

with a 15-foot by 3-foot hydraulic opening submerged 1 foot in the natural streambed with a curb-to-curb width of 24 feet on SR 4018, Section 10M in a UNT to Wolcott Creek; 3) place R-8 riprap for inlet and outlet scour protection 5 LF upstream and downstream of the culvert. The project will not impact wetlands while impacting about 75 feet of waterway. The UNT to Wolcott Creek is a WWF stream. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E08-427. Rodney VanDuzer**, R. R. 1, Box 94, Monroeton, PA 18832. Flood control Dike, in Monroe

Township, **Bradford County**, ACOE Baltimore District (Powell, PA Quadrangle N: 14.60 inches; W: 0.72 inch).

Construct and maintain a dike 200 feet long, approximately 2 feet high constructed of 2-foot by 20-foot by 6-feet long sea wall blocks and to place R-5 riprap 2 feet deep along the stream face of the sea wall extending from 1 foot minimum below the streambed to the base of the sea wall with filter fabric underlayment. The project is located on SR 4165 at the Powell Bridge.

**E14-477. Department of Transportation, District 2-0**, 1924-30 Daisy Street, Clearfield, PA 16830, SR 0322/Sec. No. 2, in Harris Township, **Centre County**, ACOE Baltimore District (State College, PA Quadrangle N: 5.4 inches; W: 1.3 inches).

To construct and maintain a 10-foot wide by 125-foot long rock outfall channel to Galbraith Gap Run and to extend a 48-inch diameter by 30-foot long reinforced concrete pipe culvert which will intercept and relocate about 75 feet of an unnamed intermittent tributary to Spring Creek. The project is located on SR 0322 about 0.3 mile east of Boalsburg. The project will impact 0.01 acre of EV wetlands while impacting about 15 feet of waterway. Galbraith Run and the unnamed tributary to Spring Creek are Cold Water Fisheries streams.

**E18-391. Department of Transportation, Engineering District 2-0**, Bridge Replacement SR 4005, Section A01, 1924-30 Daisy Street, Clearfield, PA 16830 in Chapman Township, **Clinton County**, ACOE Baltimore District (Renovo East, PA Quadrangle N: 22.2 inches; W: 10.31 inches).

To remove the existing single span, two-lane bridge with a clear span of 50 feet on a skew angle of 60° and to construct and maintain a prestressed concrete box beam bridge with concrete abutments and wing walls. The proposed bridge is located on SR 4005, 1.5 miles north of Gleasonton. The proposed single span structure has a clear span normal to the channel of 58 feet and 60 feet along the centerline of roadway. The minimum vertical underclearance of the structure is 9.67 feet. Rock, Class R-6, will be permanently placed along both abutments and all wing walls and choked with R-4. A temporary stream crossing is proposed for maintenance and protection of traffic during construction. No wetlands will be affected by the project other than streambed and banks. Natural stream bottom will be replaced and rock lining added to the disturbed bank areas for stabilization following removal of the temporary stream crossing and construction of the bridge substructure. The Left Branch of Young Womans Creek is classified as a HQ, CWF, Naturally Reproducing Trout.

**E18-401. Woodward Township Sewer Authority**, 86 Riverside Terrace, Lock Haven, PA 17745. Lockport Pump Station No. 2, in Woodward Township, **Clinton County**, ACOE Baltimore District (Lock Haven, PA Quadrangle N: 3.0 inches; W: 7.2 inches).

To: 1) construct and maintain a public sewer water proof underground lift station with the associated elevated control tower for the electrical control panel and back-up generator that has a deck surface at 575.93 feet

above sea level; 2) remove the earthen mound and above ground portions of the pre-existing Upper Lockport Lift Station No. 2, in the left 100-year flood plain of the West Branch Susquehanna River located 0.5 mile east of the Veterans Bridge in Riverview Park (Lock Haven, PA Quadrangle N: 3.0 inches; W: 7.2 inches) in Woodward Township, Clinton County. This permit was issued under Section 105.13(e) "Small Projects."

**E41-553. Kevin G. Entz**, 1179 Proctor Road, Williamsport, PA 17701. Small Projects Water Obstruction and Encroachment Joint Permit, in Woodward Township, **Lycoming County**, ACOE Susquehanna River Basin District (Williamsport, PA Quadrangle N: 18 inches; W: 3.5 inches).

To construct and maintain a 14 ft. wide by 24 ft. long by 10 ft. high storage structure, to include concrete anchors with cable ties to the structure within the floodway of the West Branch of the Susquehanna River, all of which is located 1.5 miles south from the intersection of Antlers Lane (T-331) and SR 2014 along Antlers Lane, in Woodward Township, Lycoming County. This permit was issued under Section 105.13(e) "Small Projects."

**E47-082. Montour County**, 29 Mill Street, Danville, PA 17821. County Line Branch Bridge Replacement, in Limestone Township, **Montour County**, ACOE Baltimore District (Washingtonville, PA Quadrangle N: 16.8 inches; W: 12.5 inches).

This permit authorizes the removal of the existing bridge structure in its entirety and to construct, and maintain a new bridge structure located on County Line Branch of Chillisqueque Creek, which is designated as a WWF. The new structure will have a normal span of 45.32 feet, a curb-to-curb width of 34.56 feet and an underclearance of 6.16 feet. The permit also authorizes a temporary stream crossing, which will be constructed downstream of the existing structure. The crossing will consist of four 48-inch diameter culvert pips with R-6 rock fill material, a class 4 geotextile between the existing ground and the crossing and R-6 rock on the upstream face of the roadway fill slope. In addition to the temporary crossing the permit authorizes a temporary diversion dike to convey the stream through the project area. The diversion dike will be constructed out of concrete barrier, polyethylene liner and sandbags.

**E59-469. Liberty Area Municipal Authority**, P. O. Box 73, Liberty, PA 16930. Issuance of a Standard Joint Permit for Sewage Treatment Facility and associated collection lines, in Liberty Township, **Tioga County**, ACOE Susquehanna River Basin District (Liberty, PA Quadrangle N: 10.5 inches; W: 22.0 inches).

To construct, operate and maintain a total of 37,000 feet of 3-inch, 4-inch, 6-inch and 8-inch gravity sewer, 1,600 feet of 2-inch forcemain, a stepped concrete outfall measuring 16 feet long by 3 feet wide; construct, operate and maintain 31,600 square feet of sand filters, 2,900 square yards of fill in the floodplain of Blockhouse Creek. Construction of the new sewer lines require seven wetland and 12 stream crossings that are as follows:

<i>Stream/Wetland</i>	<i>Stream Classification</i>	<i>Latitude</i>	<i>Longitude</i>
Blockhouse Creek	CWF	41° 33' 13"	77° 06' 33"
UNT—Blockhouse Creek	CWF	41° 33' 23"	77° 06' 27"
UNT—Blockhouse Creek	CWF	41° 33' 28"	77° 06' 16"
UNT—Blockhouse Creek	CWF	41° 33' 26"	77° 06' 06"

<i>Stream/Wetland</i>	<i>Stream Classification</i>	<i>Latitude</i>	<i>Longitude</i>
Blockhouse Creek	CWF	41° 33' 45"	77° 06' 14"
Blockhouse Creek	CWF	41° 33' 49"	77° 06' 11"
Blockhouse Creek	CWF	41° 33' 51"	77° 06' 11"
Blockhouse Creek	CWF	41° 33' 56"	77° 06' 11"
UNT—Blockhouse Creek	CWF	41° 34' 08"	77° 06' 17"
Blockhouse Creek (2)	CWF	41° 18' 14"	77° 07' 22"
Blockhouse Creek	CWF	41° 33' 10"	77° 06' 38"
Wetland A	EV	41° 33' 18"	77° 06' 27"
Wetland B	EV	41° 34' 01"	77° 06' 08"
Wetland C	EV	41° 33' 56"	77° 06' 08"
Wetland D	EV	41° 34' 16"	77° 06' 37"
Wetland E	EV	41° 34' 47"	77° 06' 18"
Wetland F and G	EV	41° 34' 41"	77° 06' 17"

All sewer lines shall be placed beneath streambeds so there will be a minimum of 3 feet of cover between the top of the pipe and the lowest point in the streambed. Trench plugs or clay dikes shall be used at every waterway and wetland crossing to ensure the existing hydrology is not altered. As proposed, the project temporarily impacts 0.10 acre of wetland. The project is located along the eastern and western right-of-way of SR 0414, SR 2002 and SR 2005; southern right-of-way of SR 0414 and SR 2007 in the Borough of Liberty and Liberty Township.

*Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E03-429. Worthington West Franklin Joint Municipal Authority**, 102 West Main Street, Worthington, PA 16262. To construct outfalls and sewer line crossings in Worthington Borough and West Franklin Township, **Armstrong County**, Pittsburgh ACOE District (Worthington, PA Quadrangle N: 15.6 inches; W: 3.4 inches; and Latitude: 40° 50' 08"—Longitude: 79° 38' 58"). To construct and maintain the following structures and utility line crossings as part of a comprehensive sanitary sewerage system in Worthington Borough and West Franklin Township. 1. A sewage pump station and a sewage treatment plant along the left bank of Buffalo Creek (HQ-TSF). 2. An outfall for the effluent of the proposed treatment plant in the left bank of Buffalo Creek. 3. Three pipe culverts across a proposed access road and three stormwater outfall structures on the left bank of Buffalo Creek. 5. Fifty-two sanitary sewer line crossings under the bed and across the channel of Buffalo Creek and its UNTs in accordance with the conditions of the Department's Utility Line Stream Crossing, General Permit No. 5.

**E03-432. Department of Transportation, Engineering District 10-0**, 2550 Oakland Avenue, P. O. Box 429, Indiana, PA 15701-0429. To construct a bridge in Manor Township, **Armstrong County**, Pittsburgh ACOE District (Kittanning, PA Quadrangle N: 6.9 inches; W: 1.4 inches and Latitude: 40° 47' 15"—Longitude: 79° 30' 40"). To remove the existing structure and to construct and maintain a single-span bridge having a normal clear span of 47.9 feet and an underclearance of 8.0 feet across Garretts Run (WWF) located on SR 2025, Section 153, Segment 0390, Offset 0822.

**E11-312. Cambria County Commissioners**, 200 South Center Street, Ebensburg, PA 15931. To construct a bridge in Portage Township, **Cambria County**, Pittsburgh ACOE District (Ebensburg, PA Quadrangle N: 6.7 inches; W: 4.9 inches and Latitude: 40° 24' 44"—Longitude: 78° 39' 55"). To remove the existing structure

and to construct and maintain a 32.5-foot wide, single span bridge having a normal span of 92.0 feet and a minimum underclearance of 7.13 feet across Little Conemaugh River (CWF). The project will temporarily impact a de minimis area of wetlands (PEM) equal to 0.009 acre. The project is located on Township Road 407.

**E56-336. John J. Heist**, 3606 Stoystown Road, Stoystown, PA 15563. To construct a water intake structure in Quemahoning Township, **Somerset County**, Pittsburgh ACOE District (Stoystown, PA Quadrangle N: 16.8 inches; W: 11.3 inches and Latitude: 40° 05' 33"—Longitude: 78° 57' 21"). To construct and maintain a 10.0-foot by 10.0-foot water intake structure and associated intake pipe in Beaverdam Creek (HQ-CWF) for use by the Stoystown Volunteer Fire Department. The project is located on the east side of SR 281, approximately 150 feet south of Dunmyer Road.

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

**E24-243. Hallton Church of Christ**, 14129 River Road, Hallton, PA. Parking Area Expansion, in Spring Creek Township, **Elk County**, ACOE Pittsburgh District (Hallton, PA Quadrangle N: 3.8 inches; W: 7.9 inches).

To place and maintain approximately 115 cubic yards of fill material within the floodway of the Clarion River (CWF) to expand the church parking area located along River Road approximately 1/2 mile south of the intersection of River Road and SR 3002.

**E27-077. Department of Transportation, District 1-0**, 255 Elm Street, P. O. Box 398, Oil City, PA 16301. West Hickory Bridge Across Allegheny River, in Harmony Township and Hickory Township, **Forest County**, ACOE Pittsburgh District (West Hickory, PA Quadrangle N: 12.7 inches; W: 4.2 inches).

The applicant proposes to remove the existing structure and to construct and maintain a three span, steel girder bridge having span lengths of 210 feet (west span), 320 feet (center span) and 230 feet (east span) and a minimum underclearance of 26.0 feet across the Allegheny River on SR 0127, Section B00 approximately 0.1 mile west of the intersection of SR 0127 and SR 62. Project includes a construction causeway downstream of the proposed bridge. The Allegheny River is a perennial stream classified as a WWF. The project proposes to impact approximately 100 linear feet of stream.

**E43-320. Department of Transportation, District 1-0**, 255 Elm Street, Oil City, PA 16301. SR 4006, Section B01, in Hempfield Township, **Mercer County**, ACOE Pittsburgh District. (Greenville East, PA Quadrangle N: 9.2 inches; W: 16.9 inches).

To remove the existing structure and construct and maintain a single span prestressed concrete I-beam bridge having a clear span of 126.0 feet and an average underclearance of approximately 12.56 feet on a 90 degree skew over Little Shenango River on SR 4006, Section B01. Project includes

**E43-323, Prime Auto Wash, LLC**, 224 Arrowhead Drive, Slippery Rock, PA 16057. Prime Auto Wash, in Springfield Township, **Mercer County**, ACOE Pittsburgh District (Grove City, PA Quadrangle N: 3.25 inches; W: 5.22 inches).

To fill a total of 0.074 acre of PEM wetlands for the construction of Prime Auto Wash on property located on the north side of Route 208 approximately 0.3 mile from the intersection of I-79 and Route 208. Project includes creation of 0.08 acre of replacement wetland (PEM) on site.

**E62-403, Thomas Karet, Echo Warren Associates, LP**, Warren County Retail Center, in Conewango Township, **Warren County**, ACOE Pittsburgh District (Russell, PA Quadrangle N: 1.0 inches; W: 3.5 inches).

The permit E62-403 which authorized Echo Fund 1 Holdings, LP to construct a commercial development consisting of a Wal-Mart (204, 000 square feet), a Lowe's home improvement center (111,000 square feet), 81,000 square feet of additional retail shops and associated parking (Russell, PA Quadrangle N: 1.0 inch; W: 3.5 inches) immediately NW of the intersection of US 62 (Market Street Extension) and SR 69 (Jackson Run Road)

in Conewango Township, Warren County involving: 1) to fill 0.62 acre of PEM wetland; 2) to restore 1.01 acres of wetland onsite and to enhance 0.56 acre of existing wetland onsite; 3) to construct and maintain two 3-foot diameter HDPE stormwater outfalls discharging to Jackson Run; and 4) to construct and maintain a 3.5-foot diameter HDPE stormwater outfall discharging to Conewango Creek. The permit was transferred from Echo Fund Holdings, LP to Echo Warren Associates, LP on July 14, 2005.

Permit No. E62-403 has been amended to construct a commercial development consisting of a Wal-Mart (204,000 square feet), a Lowe's home improvement center (111,000 square feet), 81,000 square feet of additional retail shops and associated parking (Russell, PA Quadrangle N: 1.0 inch; W: 3.5 inches) immediately NW of the intersection of US 62 (Market Street Extension) and SR 69 (Jackson Run Road) in Conewango Township, Warren County involving: 1) to fill 0.62 acre of PEM wetland; 2) to restore 1.01 acres of wetland onsite and to enhance 0.56 acre of existing wetland onsite; 3) to construct and maintain two 2.5-foot diameter HDPE stormwater outfalls discharging to Jackson Run; and 4) to construct and maintain a 3.5-foot diameter HDPE stormwater outfall discharging to Conewango Creek.

The project proposes to directly affect 0.62 acre of PEM wetlands and to restore 1.01 acres of wetland onsite and to enhance 0.56 acre of existing wetland onsite. Jackson Run is a perennial stream with a wild trout designation and classified as a CWF.

## STORAGE TANKS SITE-SPECIFIC INSTALLATION PERMITS

**The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101—6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Land Recycling and Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.**

<i>SSIP Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
05-01-001	Douglas R. Crumbacker ISP Minerals, Inc. 1455 Old Waynesboro Rd. Blue Ridge Summit, PA 17214	Adams	Hamiltonban Township	1 AST storing Naphthenic Oil	40,000 gallons

## SPECIAL NOTICES

### Certification to Perform Radon-Related Activities in this Commonwealth

In the month of September 2005 the Department of Environmental Protection, under the Radon Certification Act (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the following persons to perform radon-related activities in this Commonwealth. The period of certification is 2 years. For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON.

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
AmeriSpec Home	1061 Easton Road Roslyn, PA 19001	Testing
Dr. Joseph Baicker	P. O. Box 900 Rocky Hill, NJ 08553	Laboratory
George Basista	1336 Seaborn Street Suite 6 Mineral Ridge, OH 44440	Testing
Daniel Beachell	P. O. Box 1745 Harrisburg, PA 17105	Testing and Mitigation

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Terrance Best Best Building Inspection Service, Inc.	10 South Main Street Pittston, PA 18640	Testing
Bill Brodhead WPB Enterprises, Inc.	2844 Slifer Valley Road Riegelsville, PA 18077	Mitigation and Laboratory
Bryan Cole	317 McWilliams Road Levelgreen, PA 15085	Testing
Kenneth DeFelice	95 Big Ridge Drive East Stroudsburg, PA 18301	Testing
Rene DeWit	269 Burch Drive Moon Township, PA 15108	Testing
Paul Euga	916 Andrews Avenue Collingdale, PA 19023	Testing
Gregory Frazier	1642 Aster Lane Crescent, PA 15046	Testing
John Gogal	P. O. Box 204 Sciota, PA 18354	Mitigation
Elmer Hayes	1061 Easton Road Roslyn, PA 19001	Testing
HouseMaster—Main Line	1513 Woodland Road West Chester, PA 19382	Testing
Michael Israel	165 Red Haven Drive North Wales, PA 19454	Testing
Robert Johnson	340 Freed Road Harleysville, PA 19438	Testing
David Kapturowski AccuStar Laboratories	11 Awl Street Medway, MA 02053	Laboratory
Fred Klein	702 Manchester Drive Maple Glen, PA 19002	Testing
Wesley Koach	1899 Lititz Pike Lancaster, PA 17602	Testing
John LoMonaco	102 Mink Lane Greentown, PA 18426	Testing
Thomas Murray	24 S. Pearl Street P. O. Box 221 North East, PA 16428	Testing
Wayne Murray	1021 Gypsy Hill Road Lancaster, PA 17602	Testing
Timothy A. Musser Timothy A. Musser, Co., Inc.	213 North 14th Street Allentown, PA 18102	Mitigation
Thomas O'Hara	104 Spring Street Wilkes-Barre, PA 18702	Testing
Roger Olson, P. E.	17 Sylvania Road Hershey, PA 17033	Testing
Patrick Orr	10 Clifford Road McDonald, PA 15057	Testing
Prosser Laboratories	Route 115 and State Road Effort, PA 18330	Laboratory
Christopher Pyles	690 South Breezewood Road Breezewood, PA 15533	Testing and Mitigation
Radon Technology & Environmental	826 North Lewis Road Limerick, PA 19468	Mitigation
Celia Rajkovich	171 Hall Road Aliquippa, PA 15001	Testing
Jerry Reed	456 Avoy Road Lake Ariel, PA 18436	Testing

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Brian Reuss Radon Control Services	9125 Marshall Road Suite B-12 Cranberry Township, PA 16066	Mitigation
Lance Schweizer	101 Locust Knoll Road Downingtown, PA 19335	Testing
Mark Swartwood	475 Thomas Street Mountaintop, PA 18707	Testing
Jacob Troost	332 Church Road Palmerton, PA 18071	Testing
Wayne Wood	854 Boulder Drive Mt. Bethel, PA 18343	Testing

### Drinking Water State Revolving Fund

#### Special notice under the Federal Safe Drinking Water Act (SDWA)

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

#### *Project Location:*

<i>Applicant</i>	<i>Applicant Address</i>	<i>County</i>
Indian Creek Valley Water Authority	P. O. Box 486 Indian Head, PA 15446	Fayette

*Project Description:* The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The Indian Creek Valley Water Authority, Saltlick Township, Fayette County, proposes the construction of two 150,000 gallon per day slow sand drinking water filtration plants. The Department of Environmental Protection's (Department) review of the project and the information received in the Environmental Report for the project has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby approves the Environmental Assessment.

[Pa.B. Doc. No. 05-1951. Filed for public inspection October 21, 2005, 9:00 a.m.]

### Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) website at [www.dep.state.pa.us](http://www.dep.state.pa.us) (DEP Keyword: Participate). The "Current Inventory" heading is the Governor's list of nonregulatory guidance documents. The "Final Documents" heading is the link to a menu of the various Department bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2005.

#### *Ordering Paper Copies of Department Technical Guidance*

The Department encourages the use of the Internet to view guidance documents. When this option is not avail-

able, persons can order a bound paper copy of the latest inventory or an unbound paper copy of any of the final documents listed on the inventory by calling the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

#### *Changes to Technical Guidance Documents*

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

#### *Final Guidance—Minor Revision*

DEP ID: 563-2000-610. Title: Validating Abandoned Underground Mine Maps and Establishing Barrier Pillars. Description: Recent changes were made to the guidance to clarify the procedures applicable for the installation of closed-loop check survey station spads in rooms less than 600 feet. These changes will enhance the methods associated with establishing an accurate mine survey of abandoned mine voids. Effective Date: October 22, 2005. Contact: Questions regarding this technical guidance document should be directed to Gregory Shuler, P. G., (717) 783-1199, [gshuler@state.pa.us](mailto:gshuler@state.pa.us).

#### *Draft Guidance*

DEP ID: 400-2000-301. Title: Policy for Permit Coordination. Description: This draft guidance identifies coordination procedures to be used by Department staff in the technical review and decision making of projects involving multiple Department permits or authorizations. The draft guidance complements Departmental guidance #400-2000-300: Model Permit Application Process of July 11, 1994. Written Comments: Interested persons may submit written comments on this draft technical guidance document by November 21, 2005. Comments submitted by facsimile will not be accepted. The Department will accept comments submitted by e-mail. A return name and address must be included in each e-mail transmission. Written comments should be submitted to Renee Bartholomew, Department of Environmental Protection, Office of Field Operations, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17105-2063, [rebartholo@state.pa.us](mailto:rebartholo@state.pa.us). Effective Date: Upon publication

of notice as final in the *Pennsylvania Bulletin*. Contact: Questions regarding the draft technical guidance document should be directed to Renee Bartholomew, (717) 787-5028, rebartholo@state.pa.us.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 05-1952. Filed for public inspection October 21, 2005, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### Payments to Nursing Facilities; Final Rates for State Fiscal Year 2004-2005

The Department of Public Welfare (Department) intends to make changes in the payment rates for Medical Assistance (MA) nursing facility providers for the State Fiscal Year (FY) 2004-2005. The Department received 12 comment letters regarding the proposed FY 2004-2005 rate notice and considered those comments in the development of the final rates.

Under the Department's case-mix payment methodology, the Department establishes a new case-mix per diem payment rate for each MA nursing facility provider once for each fiscal year. Each provider's annual case-mix per diem rate is comprised of four cost components: (i) resident care; (ii) other resident related; (iii) administrative; and (iv) capital. For each quarter of the fiscal year, the Department adjusts the resident care cost component of each provider's rate by multiplying the resident care cost component by the provider's MA Case Mix Index for the appropriate picture date as follows: July 1 rate—February 1 picture date; October 1 rate—May 1 picture date; January 1 rate—August 1 picture date; and April 1 rate—November 1 picture date. See 55 Pa. Code § 1187.96 (relating to price and rate setting computations). The Department pays the provider for nursing facility services provided to MA recipients during that quarter using the provider's adjusted quarterly per diem rate.

The Department has calculated new annual case-mix per diem payment rates for FY 2004-2005 for MA nursing facility providers. The methodology that the Department used to set the final rates is contained in 55 Pa. Code Chapter 1187, Subchapter G (relating to rate setting) as amended at 35 Pa.B. 4612 (August 13, 2005) and the Commonwealth's approved Title XIX State Plan.

The final FY 2004-2005 annual per diem rates are available on the Office of Medical Assistance Programs' (OMAP) website at [www.dpw.state.pa.us/omap](http://www.dpw.state.pa.us/omap). The final FY 2004-2005 annual per diem rates are also available at local county assistance offices throughout this Commonwealth or by contacting Tom Jayson, Policy Unit, Bureau of Long Term Care Programs, (717) 705-3705.

The Department has also calculated adjusted quarterly rates for the July, October, January and April quarters of FY 2004-2005 for each MA nursing facility provider. These adjusted quarterly rates are also available on the

OMAP's website, at local county assistance offices and from Tom Jayson.

The database that the Department used to calculate the rates is available on the OMAP's website. Since some of the audited cost reports in the database relate to fiscal periods beginning prior to January 1, 2001, the Department revised the audited costs in the database as specified in 55 Pa. Code § 1187.91(1)(iv)(D) (relating to database) to disregard certain audit adjustments disallowing minor movable property or linen costs. The criteria that the Department used to make these revisions are available on the OMAP's website or by contacting Tom Jayson.

#### *Appeals*

An MA nursing facility provider that has not submitted a signed Certification and Settlement Agreement for Year 10 (July 1, 2004—June 30, 2005) may file an administrative appeal if it believes that the Department made any errors or the provider otherwise disagrees with its Year 10 rates. A provider's appeal must be sent, in writing, to the Department's Bureau of Hearings and Appeals, P. O. Box 2675, Harrisburg, PA 17105, and received by the Bureau of Hearings and Appeals (Bureau) within 33 days of the date of the Department's letter notifying the provider of its final rates. The filing of an appeal constitutes the exclusive way by which a provider can present the Department with a demand that a final rate be modified, reversed, rescinded or otherwise altered, or with a demand that the Department increase the amount of reimbursement paid to the provider under that rate. If a provider chooses to appeal, the provider will be afforded the opportunity for a de novo hearing before the Bureau. The provider's rates may be changed as a result of the final adjudication of the appeal. Providers should refer to 67 Pa.C.S. Chapter 11 (relating to Medical Assistance hearings and appeals) and to the Department's standing practice order, set forth at 33 Pa.B. 3053 (June 28, 2003), for more detail regarding their appeal rights and the requirements related to their written appeals.

#### *Fiscal Impact*

This change in payment rates, effective July 1, 2004, and the quarterly case-mix adjustments are estimated to cost the Department \$196.366 million (\$90.191 million in State funds) in FY 2004-2005.

#### *Public Comment*

Interested persons are invited to submit written comments regarding this notice to Gail Weidman, Chief, Program Analysis and Review Section, Department of Public Welfare, P. O. Box 2675, Harrisburg, PA 17105. Persons with a disability who require an auxiliary aid or service may submit comments using the AT&T Relay Services at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-NOT-444. (1) General Fund; (2) Implementing Year 2004-05 is \$90.191 million; (3) 1st Succeeding Year 2005-06 is \$96.939 million; 2nd Succeeding Year 2006-07 is \$96.939 million; 3rd Succeeding Year 2007-08 is \$96.939 million; 4th Succeeding Year 2008-09 is \$96.939 million; 5th Succeeding Year 2009-10 is \$96.939 million; (4) 2004-05 Program—\$983.936 million; 2003-04

Program—\$836.317 million; 2000-01 Program—\$777.084 million; (7) Medical Assistance—Long-Term Care; (8) recommends adoption. Funds have been included in the Department's budget to cover this increase.

[Pa.B. Doc. No. 05-1953. Filed for public inspection October 21, 2005, 9:00 a.m.]

**Peer Groups, Peer Group Medians and Peer Group Prices for General Nursing Facilities, County Nursing Facilities, Hospital-Based Nursing Facilities and Special Rehabilitation Facilities**

The purpose of this notice is to announce the Department of Public Welfare's (Department) peer groups, peer group medians and peer group prices for general nursing facilities, county nursing facilities, hospital-based nursing facilities and special rehabilitation facilities under 55 Pa.Code § 1187.95(a)(4) (relating to general principles for rate and price setting). The Department used the peer groups, peer group medians and peer group prices to determine case-mix rates for nursing facilities for the State Fiscal Year July 1, 2004, through June 30, 2005 (FY 04-05). The Department calculated the peer groups, peer group medians and peer group prices announced in this notice in accordance with 55 Pa. Code Chapter 1187 (relating to nursing facility services) as amended at 35 Pa.B. 4612 (August 13, 2005). The data that the Department used to determine the peer group medians and prices is available on the Office of Medical Assistance Programs' website at [www.dpw.state.pa.us/omap](http://www.dpw.state.pa.us/omap).

To establish the database for the calculation of peer group medians and prices, the Department used each facility's three most recent audited cost reports that were issued by the Department on or before March 31, 2004, and indexed the costs for each report forward to the common date of December 31, 2004, using the CMS Nursing Home Without Capital Market Basket Index.

The following is a listing, by group, of the number of facilities with a particular year-end and the inflation factor used to roll the costs of each facility forward to the common date of December 31, 2004.

**GENERAL AND COUNTY NURSING FACILITIES**

Facility Year End	Number of Facilities*	Inflation Factor
December 31, 1996	1	1.3042
June 30, 1997	1	1.2906
December 31, 1997	3	1.2663
June 30, 1998	10	1.2449
December 31, 1998	13	1.2254
June 30, 1999	32	1.2093
December 31, 1999	302	1.1775
June 30, 2000	238	1.1519
December 31, 2000	345	1.1205
June 30, 2001	243	1.0972
December 31, 2001	357	1.0843
June 30, 2002	236	1.0717
December 31, 2002	38	1.0475

**HOSPITAL-BASED NURSING FACILITIES**

Facility Year End	Number of Facilities*	Inflation Factor
June 30, 1998	2	1.2449
June 30, 1999	1	1.2093
June 30, 2000	19	1.1519

Facility Year End	Number of Facilities*	Inflation Factor
June 30, 2001	18	1.0972
June 30, 2002	17	1.0717

**SPECIAL REHABILITATION FACILITIES**

Facility Year End	Number of Facilities*	Inflation Factor
December 31, 1999	1	1.1775
June 30, 2000	3	1.1519
December 31, 2000	1	1.1205
June 30, 2001	4	1.0972
December 31, 2001	1	1.0843
June 30, 2002	4	1.0717

\* As a result of using the three most recent audited cost reports, the "Number of Facilities" column reflects a number in excess of actual enrolled nursing facilities.

After the database was inflated using the inflation values, the Department grouped the facilities in the correct geographic and bed size groupings. In accordance with regulations published at 35 Pa.B. 4612 to establish peer groups, the Department used the Metropolitan Statistical Areas (MSA) group classification published in the Federal Office of Management and Budget Bulletin No. 99-04 (relating to revised statistical definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions) to classify each nursing facility into one of three MSA groups or one non-MSA group. Then the Department used the bed complement of the nursing facility on the final day of the reporting period of the most recent audited MA-11 used in the Nursing Information System database to classify nursing facilities into one of three bed complement groups. These groups are 3—119 beds, 120—269 beds and 270 beds and over. Peer groups 7 and 10 have been collapsed in accordance with 55 Pa. Code § 1187.94(1)(iv) (relating to peer grouping for price setting). Peer group 13 is designated for special rehabilitation facilities only and peer group 14 is designated for hospital-based nursing facilities only, regardless of geographic location or bed size.

After the database was established and the peer groups determined, the Department then calculated the medians and prices for each peer group. To calculate the resident care cost medians, the Department divided the audited allowable resident care costs for each cost report by the total facility case-mix index from the available February 1 picture date closest to the midpoint of the cost report period to obtain case-mix neutral total resident care cost for the cost report year. The Department then divided the case-mix neutral total resident care cost for each cost report by the total audited actual resident days for the cost report year to obtain the case-mix neutral resident care cost per diem for the cost report year. The Department calculated the 3-year arithmetic mean of the case-mix neutral resident care cost per diem for each nursing facility to obtain the average case-mix neutral resident care cost per diem of each nursing facility. The Department arrayed the average case-mix neutral resident care cost per diem for each nursing facility within the respective peer groups and determined a median for each peer group.

To calculate the other resident care cost medians, the Department first divided the audited allowable other resident care costs for each cost report by the total audited actual resident days for the cost report year to obtain the other resident related cost per diem for the



cost report year. The Department calculated the 3-year arithmetic mean of the other resident related cost for each nursing facility to obtain the average other resident related cost per diem of each nursing facility. The Department arrayed the average other resident related cost per diem for each nursing facility within the respective peer groups and determined a median for each peer group.

To calculate the administrative cost medians, the Department adjusted, as appropriate, the total audited actual resident days for each cost report to a minimum 90% occupancy in accordance with 55 Pa. Code § 1187.23 (relating to nursing facility incentives and adjustments). The Department then divided the audited allowable administrative cost for each cost report by the total audited actual resident days, adjusted to 90% occupancy, if applicable, to obtain the administrative cost per diem for the cost report year. The Department calculated the 3-year arithmetic mean of the administrative cost for each nursing facility to obtain the average administrative cost per diem of each nursing facility. The Department arrayed the average administrative cost per diem for each nursing facility within the respective peer groups to determine a median for each peer group.

After the medians were determined for each peer group, the Department set prices using the medians. To set peer group prices, the Department multiplied the resident care cost median of each peer group by 1.17 to obtain the resident care cost peer group price, multiplied the other resident related cost median of each peer group by 1.12 to obtain the other resident related peer group price and multiplied the administrative cost median of each peer group by 1.04 to obtain the administrative cost peer group price.

The peer groups, peer group medians and peer group prices of general and county nursing facilities, hospital-based and special rehabilitation nursing facilities for Year 10 are listed in Annex A.

A Medical Assistance nursing facility provider that has not submitted a signed Certification and Settlement Agreement for Year 10 may file an administrative appeal if the provider believes that the Department made any errors or the provider otherwise disagrees with the Year 10 peer group prices that the Department established for its peer group. A provider's appeal must be in sent in writing to the Department's Bureau of Hearings and

Appeals, P. O. Box 2675, Harrisburg, PA 17102, and received by the Bureau of Hearings and Appeals (Bureau) within 30 days of the date of this notice. If a provider chooses to appeal, the provider will be afforded the opportunity for a de novo hearing before the Bureau. The peer group prices applied in setting the provider's rates may be changed as a result of the final adjudication of the provider's peer group price appeal. Providers should refer to 67 Pa.C.S. Chapter 11 (relating to Medical Assistance hearings and appeals) and to the Department's standing practice order set forth at 33 Pa.B. 3053 (June 28, 2003), for more detail regarding their appeal rights and the requirements related to their written appeals.

#### *Fiscal Impact*

The fiscal impact associated with this change is estimated to be \$29.962 million (\$13.761 million in State funds) for FY 04-05. This reflects the increase over the July 1, 2003, peer groups and is included in the final July rates. This fiscal impact is also included in the fiscal note announcing the final July 1, 2004, case mix rates.

#### *Public Comment*

Interested persons are invited to submit written comments regarding this notice to Gail Weidman, Chief, Program Analysis and Review Section, Department of Public Welfare, Bureau of Long Term Care Programs, P. O. Box 2675, Harrisburg, PA 17105.

Persons with a disability who require an auxiliary aid or service may submit comments using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-NOT-443. (1) General Fund; (2) Implementing Year 2005-06 is \$13.761 million; (3) 1st Succeeding Year 2006-07 is \$15.012 million; 2nd Succeeding Year 2007-08 is \$15.012 million; 3rd Succeeding Year 2008-09 is \$15.012 million; 4th Succeeding Year 2009-10 is \$15.012 million; 5th Succeeding Year 2010-11 is \$15.012 million; (4) 2004-05 Program—\$983.936 million; 2003-04 Program—\$836.317 million; 2002-03 Program—\$777.084 million; (7) Medical Assistance—Long-Term Care; (8) recommends adoption. Funds have been included in the Department's budget to cover this increase.

### Annex A

#### TITLE 55. PUBLIC WELFARE PART III. MEDICAL ASSISTANCE MANUAL CHAPTER 1187. NURSING FACILITY SERVICES Subchapter G. RATE SETTING Appendix B

#### MEDIANS AND PRICES FOR 2004-2005

File Date: 7/4/2005

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
1	BROOMALL REHAB AND NURSING CENTER	12/31/2001	12/31/2000	12/31/1999
1	CARE PAVILION OF WALNUT PARK, INC	06/30/2002	06/30/2001	06/30/2000
1	FAIR ACRES GERIATRIC CENTER	12/31/2001	12/31/2000	12/31/1999
1	FRIENDSHIP RIDGE	12/31/2001	12/31/2000	12/31/1999

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
1	IMMACULATE MARY HOME	06/30/2002	06/30/2001	06/30/2000
1	JOHN J KANE REGIONAL CENTER—GLEN HAZEL	12/31/2001	12/31/2000	12/31/1999
1	JOHN J KANE REGIONAL CENTER—MCKEESPORT	12/31/2001	12/31/2000	12/31/1999
1	JOHN J KANE REGIONAL CENTER—ROSS TOWNSHIP	12/31/2001	12/31/2000	12/31/1999
1	JOHN J KANE REGIONAL CENTER—SCOTT TOWNSHIP	12/31/2001	12/31/2000	12/31/1999
1	MONTGOMERY COUNTY GERIATRIC & REHAB CTR	12/31/2001	12/31/2000	12/31/1999
1	NESHAMINY MANOR HOME	12/31/2001	12/31/2000	12/31/1999
1	PHILADELPHIA NURSING HOME	12/31/2001	12/31/2000	12/31/1999
1	POCOPSON HOME	12/31/2001	12/31/2000	12/31/1999
1	SAINT FRANCIS COUNTRY HOUSE	06/30/2002	06/30/2001	06/30/2000
1	SAINT JOSEPH'S MANOR	06/30/2002	06/30/2001	06/30/2000
1	ST JOHN SPECIALTY CARE CENTER	06/30/2002	06/30/2001	06/30/2000
1	WASHINGTON COUNTY HEALTH CENTER	12/31/2001	12/31/2000	12/31/1999
1	WESTMORELAND MANOR	12/31/2001	12/31/2000	12/31/1999
PG1	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$91.91	\$47.55		\$16.29
PG1	Resident Care Price	Other Resident Rltd Price		Administrative Price
	\$107.53	\$53.26		\$16.94
<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
2	ANDORRA WOODS HEALTHCARE CENTER	12/31/2001	12/31/2000	12/31/1999
2	ASBURY HEALTH CENTER	12/31/2001	12/31/2000	12/31/1999
2	ASHTON HALL NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	ATTLEBORO NURSING AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
2	BALA NURSING AND RETIREMENT CENTER	06/30/2001	06/30/2000	06/30/1999
2	BALDOCK HEALTH CARE CENTER	06/30/2002	06/30/2001	06/30/2000
2	BALDWIN HEALTH CENTER, INC	06/30/2002	06/30/2001	06/30/2000
2	BAPTIST HOMES NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
2	BEAVER VALLEY NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	BELMONT AND PARKSIDE GERIATRIC CENTER	12/31/2001	06/30/2000	06/30/1999
2	BEVERLY HEALTHCARE—LANSDALE	12/31/2001	12/31/2000	12/31/1999
2	BEVERLY HEALTHCARE—MONROEVILLE	12/31/2001	12/31/2000	12/31/1999
2	BEVERLY HEALTHCARE—MOUNT LEBANON MANOR	12/31/2001	12/31/2000	12/31/1999
2	BEVERLY HEALTHCARE—MURRYSVILLE	12/31/2001	12/31/2000	12/31/1999
2	BEVERLY HEALTHCARE—PHOENIXVILLE	12/31/2001	12/31/2000	12/31/1999
2	BEVERLY HEALTHCARE—UNIONTOWN	12/31/2001	12/31/2000	12/31/1999
2	BRANDYWINE HALL	06/30/2002	06/30/2001	06/30/2000

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
2	BRIARCLIFF PAVILION FOR SPECIALIZED CARE	12/31/2001	12/31/2000	12/31/1999
2	BRIARLEAF NURSING AND CONVAL CENTER	06/30/2002	06/30/2001	06/30/2000
2	BROOKSIDE HEALTHCARE AND REHAB CENTER	06/30/2000	06/30/1998	06/30/1997
2	BROOMALL PRESBYTERIAN VILLAGE	12/31/2001	12/31/2000	12/31/1999
2	BUCKINGHAM VALLEY REHAB AND NURSING CTR	06/30/2002	06/30/2001	06/30/2000
2	CATHEDRAL VILLAGE	06/30/2002	06/30/2001	06/30/2000
2	CHAPEL MANOR	12/31/2002	12/31/2001	12/31/2000
2	CHARLES M. MORRIS NURSING AND REHAB CTR	06/30/2002	06/30/2001	06/30/2000
2	CHATEAU SENIOR SERVICES LLC	12/31/2000	12/31/1999	12/31/1998
2	CHATHAM ACRES, INC	06/30/2002	06/30/2001	06/30/2000
2	CHELTENHAM NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	CHELTENHAM YORK ROAD NSG & REHAB CENTER	06/30/2002	06/30/2001	06/30/1999
2	CHERRY TREE NURSING CENTER	12/31/2001	12/31/2000	12/31/1999
2	CHESTNUT HILL LODGE HEALTH AND REHAB CTR	12/31/2001	12/31/2000	12/31/1999
2	CHURCH LANE SENIOR SERVICES LLC	12/31/2002	12/31/2001	12/31/2000
2	CLIVEDEN CONVALESCENT CENTER	06/30/2002	06/30/2001	06/30/2000
2	CONCORDIA LUTHERAN MINISTRIES	06/30/2002	06/30/2001	06/30/2000
2	COUNTRY MEADOWS OF SOUTH HILLS	12/31/2001	12/31/2000	12/31/1999
2	CRANBERRY PLACE	06/30/2002	06/30/2001	06/30/2000
2	CRESTVIEW CENTER	06/30/2002	06/30/2001	06/30/2000
2	DEER MEADOWS RETIREMENT COMMUNITY	06/30/2002	06/30/2001	06/30/2000
2	DOYLESTOWN MANOR	12/31/2001	12/31/2000	12/31/1999
2	ELKINS CREST HEALTH AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	EVANGELICAL MANOR	12/31/2001	12/31/2000	12/31/1999
2	FAIRVIEW CARE CENTER OF BETHLEHEM PIKE	06/30/2002	06/30/2001	06/30/2000
2	FAIRVIEW CARE CENTER OF PAPERMILL ROAD	06/30/2002	06/30/2001	06/30/2000
2	FORBES ROAD NURSING AND REHAB CENTER	06/30/2001	06/30/2000	06/30/1999
2	GARDEN SPRING CENTER	06/30/2002	06/30/2001	06/30/2000
2	GERMANTOWN HOME	06/30/2002	06/30/2001	06/30/2000
2	GOLDEN SLIPPER CLUB UPTOWN HOME FOR AGED	06/30/2002	06/30/2001	06/30/2000
2	GREEN ACRES—IVY HILL NURSING HOME	06/30/2002	06/30/2001	06/30/2000
2	GREENERY SPECIALTY CARE CENTER	06/30/2002	06/30/2001	06/30/2000
2	GREENLEAF NURSING HOME AND CONVAL CENTER	06/30/2002	06/30/2001	06/30/2000
2	GREENSBURG CARE CENTER	12/31/2001	12/31/1999	12/31/1998
2	GWYNEDD SQUARE CTR FOR NSG & CONVAL CARE	06/30/2002	06/30/2001	06/30/2000

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
2	HARMAR VILLAGE CARE CENTER	12/31/2001	12/31/2000	12/31/1999
2	HARSTON HALL	12/31/2002	12/31/2001	12/31/2000
2	HEARTLAND HEALTH CARE CENTER	06/30/2002	06/30/2001	06/30/2000
2	HEMPFIELD MANOR	12/31/2001	12/31/2000	12/31/1999
2	HERITAGE SHADYSIDE, THE	06/30/2002	06/30/2001	06/30/2000
2	HIGHLAND PARK CARE CENTER	06/30/2001	06/30/2000	06/30/1999
2	HILLCREST CENTER	06/30/2002	06/30/2001	06/30/2000
2	HUMBERT LANE HEALTH CARE CENTER	06/30/2002	06/30/2001	06/30/2000
2	IHS OF GREATER PITTSBURGH	12/31/2001	12/31/2000	12/31/1999
2	LAFAYETTE REDEEMER, THE	06/30/2002	06/30/2001	06/30/2000
2	LANGHORNE GARDENS REHAB AND NURSING CTR	06/30/2002	06/30/2001	06/30/2000
2	LEMINGTON CENTER	06/30/2002	06/30/2001	06/30/2000
2	LGAR HEALTH AND REHABILITATION CENTER	12/31/2001	12/31/2000	12/31/1999
2	LIBERTY COURT, GENESIS ELDERCARE NETWORK	06/30/2002	06/30/2001	06/30/2000
2	LIFEQUEST NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
2	LITTLE FLOWER MANOR	06/30/2002	06/30/2001	06/30/2000
2	LUTHER WOODS CONVALESCENT CENTER	12/31/2001	12/31/2000	12/31/1999
2	MAIN LINE NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	MAJESTIC OAKS	06/30/2002	06/30/2001	06/30/2000
2	MANATAWNY MANOR INC	06/30/2002	06/30/2001	06/30/2000
2	MANORCARE HEALTH SVCS—BETHEL PARK	12/31/2001	12/31/2000	12/31/1999
2	MANORCARE HEALTH SVCS—GREEN TREE	12/31/2001	12/31/2000	12/31/1999
2	MANORCARE HEALTH SVCS—HUNTINGDON VALLEY	12/31/2001	12/31/2000	12/31/1999
2	MANORCARE HEALTH SVCS—KING OF PRUSSIA	12/31/2001	12/31/2000	12/31/1999
2	MANORCARE HEALTH SVCS—LANSDALE	12/31/2001	12/31/2000	12/31/1999
2	MANORCARE HEALTH SVCS—MCMURRAY	12/31/2001	12/31/2000	12/31/1999
2	MANORCARE HEALTH SVCS—MERCY FITZGERALD	06/30/2002	06/30/2001	06/30/2000
2	MANORCARE HEALTH SVCS—MONROEVILLE	12/31/2001	12/31/2000	12/31/1999
2	MANORCARE HEALTH SVCS—NORTH HILLS	12/31/2001	12/31/2000	12/31/1999
2	MANORCARE HEALTH SVCS—POTTSTOWN	12/31/2002	12/31/2001	12/31/2000
2	MANORCARE HEALTH SVCS—WHITEHALL BOROUGH	12/31/2001	12/31/2000	
2	MANORCARE HEALTH SVCS—YARDLEY	12/31/2001	12/31/2000	12/31/1999
2	MANORCARE HEALTH SVCS—YEADON	12/31/2001	12/31/2000	12/31/1999
2	MAPLEWOOD MANOR CENTER	06/30/2002	06/30/2001	06/30/2000
2	MARIAN MANOR CORPORATION	06/30/2002	06/30/2001	06/30/2000
2	MARINER HEALTH CARE OF WEST HILLS	06/30/2002	06/30/2001	06/30/2000
2	MASONIC VILLAGE AT SEWICKLEY	12/31/2001	12/31/2000	06/30/1998
2	METHODIST HOSPITAL NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
2	MOUNT MACRINA MANOR NURSING HOME	06/30/2002	06/30/2001	06/30/2000
2	MOUNTAINVIEW SPECIALTY CARE CENTER	12/31/2001	12/31/2000	12/31/1999
2	OXFORD HEALTH CENTER	12/31/2001	12/31/2000	12/31/1999

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
2	PARK PLEASANT HEALTH CARE FACILITY	06/30/2002	06/30/2001	06/30/2000
2	PASSAVANT RETIREMENT AND HEALTH CENTER	06/30/2002	06/30/2001	06/30/2000
2	PAUL'S RUN	12/31/2001	12/31/2000	12/31/1999
2	PEMBROOKE HEALTH AND REHAB RESIDENCE	06/30/2002	06/30/2001	06/30/2000
2	PENN CENTER FOR REHABILITATION AND CARE	06/30/2002	06/30/2001	06/30/2000
2	PENNSBURG MANOR	12/31/2002	12/31/2001	12/31/2000
2	PHOEBE RICHLAND HCC	06/30/2002	06/30/2001	06/30/2000
2	PINE RUN HEALTH CENTER	06/30/2002	06/30/2001	06/30/2000
2	PLYMOUTH HOUSE NURSING HOME, INC	12/31/2000	12/31/1999	12/31/1998
2	PROSPECT PARK HEALTH AND REHAB RESIDENCE	06/30/2002	06/30/2001	06/30/2000
2	PROVIDENCE CARE CENTER	12/31/2001	12/31/2000	12/31/1999
2	QUAKERTOWN CENTER	12/31/2002	12/31/2001	12/31/2000
2	REGINA COMMUNITY NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
2	RIDGE CREST NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	RITTENHOUSE PINE CENTER	06/30/2002	06/30/2001	06/30/2000
2	RIVER'S EDGE NURSING AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
2	RIVERSIDE CARE CENTER	12/31/2001	12/31/2000	12/31/1999
2	ROCHESTER MANOR	12/31/2001	12/31/2000	12/31/1999
2	RYDAL PARK OF PHILADELPHIA PRSBYTR HOMES	12/31/2001	12/31/2000	12/31/1999
2	SACRED HEART MANOR	06/30/2002	06/30/2001	06/30/2000
2	SAINT ANNE HOME	06/30/2002	06/30/2001	06/30/2000
2	SAINT IGNATIUS NURSING HOME	06/30/2002	06/30/2001	06/30/2000
2	SAINT JOHN NEUMANN NURSING HOME	06/30/2002	06/30/2001	06/30/2000
2	SAINT MARTHA MANOR	06/30/2002	06/30/2001	06/30/2000
2	SAINT MARY'S MANOR	06/30/2002	06/30/2001	06/30/2000
2	SANATOGA CENTER	06/30/2002	06/30/2001	06/30/2000
2	SAUNDERS HOUSE	06/30/2002	06/30/2001	06/30/2000
2	SENECA PLACE	06/30/2002	06/30/2001	06/30/2000
2	SHADYSIDE NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	SILVER LAKE CENTER	06/30/2002	06/30/2001	06/30/2000
2	SILVER STREAM CENTER	06/30/2002	06/30/2001	06/30/2000
2	SIMPSON HOUSE, INC	12/31/2001	12/31/2000	12/31/1999
2	SOMERTON CENTER	06/30/2002	06/30/2001	06/30/2000
2	SOUTHMONT OF PRESBYTERIAN SENIORCARE	12/31/2002	12/31/2001	12/31/2000
2	SPRINGS AT THE FOUNTAINS, THE	06/30/2002	06/30/2001	06/30/2000
2	ST. BARNABAS, INC	06/30/2002	06/30/2001	06/30/2000
2	STAPELEY IN GERMANTOWN	06/30/2002	06/30/2001	06/30/2000
2	STERLING HEALTH CARE AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	SUBURBAN WOODS HEALTH AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
2	SUNNYVIEW HOME—BUTLER COUNTY HOME	12/31/2001	12/31/2000	12/31/1999
2	SYCAMORE CREEK NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
2	TANDEM HEALTH CARE OF CHESWICK	06/30/2002	06/30/2001	06/30/2000
2	TEL HAI RETIREMENT COMMUNITY	06/30/2002	06/30/2001	06/30/2000
2	THE BELVEDERE, GENESIS ELDERCARE NETWORK	12/31/2002	12/31/2001	12/31/2000
2	TOWNE MANOR EAST	12/31/2001	12/31/2000	12/31/1999
2	TUCKER HOUSE	06/30/2002	06/30/2001	06/30/2000
2	VALLEY MANOR NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	VILLA SAINT JOSEPH OF BADEN INC.	06/30/2002	06/30/2001	06/30/2000
2	VINCENTIAN HOME	06/30/2002	06/30/2001	06/30/1999
2	VINCENTIAN REGENCY	06/30/2002	06/30/2001	06/30/1999
2	WALLINGFORD NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
2	WEST HAVEN NURSING HOME	06/30/2002	06/30/2001	06/30/2000
2	WESTWOOD NURSING AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
2	WEXFORD HOUSE	06/30/2002	06/30/2001	06/30/2000
2	WIGHTMAN CENTER FOR NURSING AND REHAB	12/31/2002	12/31/2001	12/31/2000
2	WILLOW RIDGE CENTER	12/31/2002	12/31/2001	12/31/2000
2	WILLOW TERRACE	06/30/2002	06/30/2001	
2	WILLOWS OF PRESBYTERIAN SENIORCARE, THE	12/31/2002	12/31/2001	12/31/2000
2	WOODHAVEN CARE CENTER	12/31/2001	12/31/2000	12/31/1999
PG2	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$79.16	\$33.22		\$16.47
PG2	Resident Care Price	Other Resident Rltd Price		Administrative Price
	\$92.62	\$37.21		\$17.13
<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
3	58TH STREET PRESBYTERIAN HOME, THE	12/31/2001	12/31/2000	12/31/1999
3	AMBLER REST CENTER	06/30/2002	06/30/2001	06/30/2000
3	ARTMAN LUTHERAN HOME	06/30/2002	06/30/2001	06/30/2000
3	AUTUMN GROVE CARE CENTER	06/30/2002	06/30/2001	06/30/2000
3	BARCLAY FRIENDS	12/31/2002	12/31/2001	12/31/2000
3	BEAVER ELDER CARE AND REHAB CENTER	06/30/2001	06/30/2000	06/30/1999
3	BELAIR HEALTH AND REHABILITATION CENTER	06/30/2002	06/30/2001	06/30/2000
3	BELLE HAVEN	12/31/2001	12/31/2000	12/31/1999
3	BETHLEN HM OF THE HUNGARIAN RFRMD FED	12/31/2001	12/31/2000	12/31/1999
3	BEVERLY HEALTHCARE—CANONSBURG	12/31/2001	12/31/2000	12/31/1999
3	BEVERLY HEALTHCARE—OAKMONT	12/31/2001	12/31/2000	12/31/1999
3	BEVERLY HEALTHCARE—ROSEMONT	12/31/2001	12/31/2000	12/31/1999

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
3	BEVERLY HEALTHCARE—STENTON	12/31/2001	12/31/2000	12/31/1999
3	BRINTON MANOR	12/31/2002	12/31/2001	12/31/2000
3	CANTERBURY PLACE	12/31/2001	12/31/2000	12/31/1999
3	CARE CENTER AT MARTINS RUN, THE	12/31/2001	12/31/2000	12/31/1999
3	CEDARS OF MONROEVILLE, THE	12/31/2001	12/31/2000	12/31/1999
3	CHANDLER HALL HEALTH SERVICES INC	12/31/2001	12/31/2000	12/31/1999
3	CHICORA MEDICAL CENTER	06/30/2002	06/30/2001	06/30/1999
3	CHRIST'S HOME RETIREMENT CENTER	06/30/2002	06/30/2001	06/30/2000
3	COLLINS HEALTH CENTER	12/31/2001	12/31/2000	12/31/1999
3	CONNER-WILLIAMS NURSING HOME	06/30/2002	06/30/2001	06/30/2000
3	CONTINUING CARE NURSING AND REHAB CORP	06/30/2002	06/30/2001	06/30/2000
3	COVENTRY MANOR NURSING HOME	12/31/2001	12/31/2000	06/30/1999
3	DOCK TERRACE	06/30/2002	06/30/2001	06/30/2000
3	DRESHER HILL HEALTH AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
3	EDGEHILL NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
3	EDGEWOOD NURSING CENTER	06/30/2001	06/30/1999	06/30/1998
3	ELDERCREST NURSING CENTER	06/30/2001	06/30/1999	06/30/1998
3	ELM TERRACE GARDENS	06/30/2002	06/30/2001	06/30/2000
3	EVERGREEN NURSING CENTER	12/31/2001	12/31/2000	12/31/1999
3	FAIR WINDS MANOR	06/30/2002	06/30/2001	06/30/2000
3	FREDERICK MENNONITE COMMUNITY	12/31/2001	12/31/2000	12/31/1999
3	FRIENDSHIP VILLAGE OF SOUTH HILLS	12/31/2001	12/31/2000	12/31/1999
3	HARMON HOUSE CARE CENTER	12/31/2001	12/31/2000	12/31/1999
3	HAVENCREST NURSING CENTER	06/30/2001	06/30/1999	06/30/1998
3	HAVERFORD NURSING & REHABILITATION CTR	06/30/2002	06/30/2001	06/30/2000
3	HENRY CLAY VILLA	12/31/2002	12/31/2001	12/31/2000
3	HERITAGE TOWERS	12/31/2001	12/31/2000	12/31/1999
3	HICKORY HOUSE NURSING HOME	12/31/2001	12/31/2000	12/31/1999
3	HIGHLAND CENTER, GENESIS ELDERCARE NTWRK	06/30/2002	06/30/2001	06/30/2000
3	HOLY FAMILY HOME	12/31/2001	12/31/2000	12/31/1999
3	HOPKINS CENTER	12/31/2002	12/31/2001	12/31/2000
3	HORIZON SENIOR CARE	06/30/2002	06/30/2001	06/30/2000
3	JEFFERSON HILLS MANOR	12/31/2001	12/31/2000	06/30/1999
3	KADE NURSING HOME	12/31/2001	12/31/2000	12/31/1999
3	KEARSLEY LONG TERM CARE CENTER	06/30/2002	06/30/2001	06/30/2000
3	LAFAYETTE MANOR, INC	12/31/2001	12/31/2000	12/31/1999
3	LAUREL RIDGE CENTER	06/30/2002	06/30/2001	06/30/2000
3	LAWSON NURSING HOME, INC.	12/31/2001	12/31/2000	12/31/1999
3	LITTLE SISTERS OF THE POOR	12/31/2001	12/31/2000	12/31/1999
3	LOYALHANNA CARE CENTER	12/31/2001	12/31/2000	12/31/1999
3	LUTHERAN COMM AT TELFORD HLTHCRE CTR INC	06/30/2002	06/30/2001	06/30/2000
3	MARINER HEALTH CARE OF NORTH HILLS	06/30/2002	06/30/2001	06/30/2000
3	MARWOOD REST HOME, INC	06/30/2002	06/30/2001	06/30/2000

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
3	MARY J DREXEL HOME	12/31/2001	12/31/2000	12/31/1999
3	MASONIC EASTERN STAR HOME EAST	12/31/2001	12/31/2000	12/31/1999
3	MASONIC VILLAGE AT LAFAYETTE HILL	12/31/2001	12/31/2000	12/31/1999
3	MCMURRAY HILLS MANOR	06/30/2002	06/30/2001	06/30/2000
3	MEADOWCREST NURSING CENTER	06/30/2001	06/30/1999	06/30/1998
3	NAAMANS CREEK COUNTRY MANOR	06/30/2002	06/30/2001	06/30/2000
3	OAK HILL NURSING AND REHAB CENTER	06/30/2001	06/30/1999	06/30/1998
3	PENNYPACK CENTER	12/31/2002	12/31/2001	12/31/2000
3	PETER BECKER COMMUNITY	06/30/2002	06/30/2001	06/30/2000
3	PHILADELPHIA PROTESTANT HOME	12/31/2001	12/31/2000	12/31/1999
3	PICKERING MANOR HOME	06/30/2002	06/30/2001	06/30/2000
3	REDSTONE HIGHLANDS HEALTH CARE CENTER	06/30/2002	06/30/2001	06/30/2000
3	REFORMED PRESBYTERIAN HOME	12/31/2001	12/31/2000	12/31/1999
3	RICHBORO CARE CENTER	06/30/2002	06/30/2001	06/30/2000
3	ROCKHILL MENNONITE COMMUNITY	06/30/2002	06/30/2001	06/30/2000
3	SAINT JOSEPH VILLA	06/30/2002	06/30/2001	06/30/2000
3	SAXONY HEALTH CENTER	12/31/2001	12/31/2000	12/31/1998
3	SCOTTDALE MANOR REHABILITATION CENTER	12/31/2001	12/31/1999	12/31/1998
3	SHERWOOD OAKS	06/30/2002	06/30/2001	06/30/2000
3	SKY VUE TERRACE	06/30/2002	06/30/2001	06/30/2000
3	SOUDERTON MENNONITE HOMES	06/30/2002	06/30/2001	06/30/2000
3	SOUTH FAYETTE NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
3	SOUTHWESTERN NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
3	STATESMAN HEALTH AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
3	TOWNE MANOR WEST	12/31/2001	12/31/2000	12/31/1999
3	UNITARIAN UNIVERSALIST HOUSE	12/31/2001	12/31/2000	12/31/1999
3	VALENCIA WOODS NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
3	VINCENTIAN DE MARILLAC	06/30/2002	06/30/2001	06/30/1999
3	WASHINGTON HOSP TRANSITIONAL CARE UNIT	06/30/2002	06/30/2001	06/30/2000
3	WAYNE CENTER	06/30/2002	06/30/2001	06/30/2000
3	WILLIAM PENN CARE CENTER	12/31/2001	12/31/2000	12/31/1999
3	WILLOWBROOKE COURT AT BRITTANY POINTE	12/31/2001	12/31/2000	12/31/1999
3	WYNCOTE CHURCH HOME	06/30/2002	06/30/2001	06/30/2000
PG3	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$78.10	\$34.54		\$16.82
PG3	Resident Care Price	Other Resident Rltd Price		Administrative Price
	\$91.38	\$38.68		\$17.49
<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
4	ALLIED SERVICES SKILLED NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
4	BERKS HEIM	12/31/2001	12/31/2000	12/31/1999



<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
4	BRETHREN HOME COMMUNITY, THE	06/30/2002	06/30/2001	06/30/2000
4	CAMBRIA COUNTY HOME—LAUREL CREST REHAB	12/31/2001	12/31/2000	12/31/1999
4	CEDAR HAVEN	12/31/2001	12/31/2000	12/31/1999
4	CEDARBROOK NURSING HOMES	12/31/2001	12/31/2000	12/31/1999
4	CLAREMONT NRC OF CUMBERLAND COUNTY	12/31/2001	12/31/2000	12/31/1999
4	COLONIAL MANOR NURSING HOME	12/31/2001	12/31/2000	12/31/1999
4	CONESTOGA VIEW	12/31/2001	12/31/2000	12/31/1999
4	GRACEDALE—NORTHAMPTON COUNTY HOME	12/31/2001	12/31/2000	12/31/1999
4	GRANDVIEW HEALTH HOMES, INC	06/30/2002	06/30/2001	06/30/2000
4	LACKAWANNA COUNTY HEALTH CARE CENTER	12/31/2001	12/31/2000	12/31/1999
4	MASONIC HOMES	12/31/2001	12/31/2000	12/31/1999
4	MOUNTAIN CITY NURSING AND REHAB CENTER	12/31/2001	12/31/2000	06/30/1998
4	MOUNTAIN VIEW MANOR NRSG AND REHAB CTR	12/31/2001	12/31/2000	12/31/1999
4	PHOEBE HOME, INC	06/30/2002	06/30/2001	06/30/2000
4	PLEASANT RIDGE MANOR EAST/WEST	12/31/2001	12/31/2000	12/31/1999
4	SPRING CREEK REHAB AND HEALTH CARE CTR	12/31/2001	12/31/2000	12/31/1999
4	VALLEY CREST NURSING HOME	12/31/2001	12/31/2000	12/31/1999
4	WEST SHORE HEALTH AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
4	YORK COUNTY NURSING HOME	12/31/2001	12/31/2000	12/31/1999
PG4	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$92.07	\$42.82		\$14.66
PG4	Resident Care Price	Other Resident Rltd Price		Administrative Price
	\$107.72	\$47.96		\$15.25
<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
5	ABINGTON MANOR	12/31/2002	12/31/2001	12/31/2000
5	BERKSHIRE CENTER	06/30/2002	06/30/2001	06/30/2000
5	BERWICK RETIREMENT VILLAGE NRSNG CTR II	06/30/2001	06/30/2000	06/30/1998
5	BEVERLY HEALTHCARE—EAST MOUNTAIN	12/31/2001	12/31/2000	12/31/1999
5	BEVERLY HEALTHCARE—READING	12/31/2001	12/31/2000	12/31/1999
5	BEVERLY HEALTHCARE—SCRANTON	12/31/2001	12/31/2000	12/31/1999
5	BEVERLY HEALTHCARE—TUNKHANNOCK	12/31/2001	12/31/2000	12/31/1999
5	BEVERLY HEALTHCARE—WESTERN RESERVE	12/31/2001	12/31/2000	12/31/1999
5	BEVERLY MANOR OF LANCASTER	12/31/2001	12/31/2000	12/31/1999
5	BIRCHWOOD NURSING AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
5	BLOOMSBURG HEALTH CARE CENTER	06/30/2002	06/30/2001	06/30/2000
5	BRETHREN VILLAGE	06/30/2002	06/30/2001	06/30/2000
5	COLONIAL PARK CARE CENTER	12/31/2001	12/31/2000	12/31/1999

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
5	CORNWALL MANOR	12/31/2001	12/31/2000	12/31/1999
5	CORRY MANOR	12/31/2001	12/31/2000	12/31/1999
5	DUNMORE HEALTH CARE CENTER	06/30/2002	06/30/2000	06/30/1999
5	EASTON NURSING CENTER	12/31/2001	12/31/2000	06/30/1999
5	ECC RETIREMENT VILLAGE—ALBRIGHT CAMPUS	12/31/2001	12/31/2000	12/31/1999
5	EDINBORO MANOR	12/31/2001	12/31/2000	12/31/1999
5	EPHRATA MANOR	12/31/2001	12/31/2000	12/31/1999
5	FAIRMOUNT HOMES	06/30/2002	06/30/2001	06/30/2000
5	FAIRVIEW MANOR	12/31/2001	12/31/2000	12/31/1999
5	FELLOWSHIP MANOR	06/30/2002	06/30/2001	06/30/2000
5	FREY VILLAGE	12/31/2001	12/31/2000	12/31/1999
5	HAMILTON ARMS CENTER	06/30/2002	06/30/2001	06/30/2000
5	HANOVER HALL	12/31/2001	12/31/2000	12/31/1999
5	HARRISON HOUSE	12/31/2000	12/31/1999	12/31/1998
5	HEATHERBANK	12/31/2001	12/31/2000	12/31/1999
5	HIGHLAND MANOR NURSING AND CONVAL CENTER	06/30/2002	06/30/2001	06/30/2000
5	HOLY FAMILY MANOR, INC	12/31/2001	12/31/2000	12/31/1999
5	HOMEWOOD AT PLUM CREEK	12/31/2001	12/31/2000	12/31/1999
5	IHS OF ERIE AT BAYSIDE	12/31/2001	12/31/2000	12/31/1999
5	JEWISH HOME OF EASTERN PENNSYLVANIA	12/31/2001	12/31/2000	12/31/1999
5	JEWISH HOME OF GREATER HARRISBURG	06/30/2002	06/30/2001	06/30/2000
5	KINGSTON COMMONS	12/31/2001	12/31/2000	12/31/1999
5	KUTZTOWN MANOR	06/30/2002	06/30/2001	06/30/2000
5	LANCASHIRE HALL	12/31/2001	12/31/2000	12/31/1999
5	LAUREL CENTER	12/31/2002	12/31/2001	12/31/2000
5	LEBANON VALLEY BRETHERN HOME	12/31/2001	12/31/2000	12/31/1999
5	LEHIGH CENTER	06/30/2002	06/30/2001	06/30/2000
5	LIBERTY NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
5	LITTLE FLOWER MANOR OF DIOCESE SCRANTON	12/31/2001	12/31/2000	12/31/1999
5	LUTHERAN HOME AT TOPTON	12/31/2001	12/31/2000	12/31/1999
5	MAHONING VALLEY NURSING AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—ALLENTOWN	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—BETHLEHEM I	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—BETHLEHEM II	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—CAMP HILL	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—CARLISLE	12/31/2002	12/31/2001	12/31/2000
5	MANORCARE HEALTH SVCS—DALLASTOWN	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—EASTON	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—KINGSTON	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—KINGSTON COURT	06/30/2002	06/30/2001	06/30/2000
5	MANORCARE HEALTH SVCS—LANCASTER	12/31/2001	12/31/2000	12/31/1999

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
5	MANORCARE HEALTH SVCS—LAURELDALE	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—LEBANON	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—SINKING SPRING	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—WEST READING NORTH	12/31/2001	12/31/2000	12/31/1999
5	MANORCARE HEALTH SVCS—YORK NORTH	06/30/2002	06/30/2001	06/30/2000
5	MANORCARE HEALTH SVCS—YORK SOUTH	06/30/2002	06/30/2001	06/30/2000
5	MAPLE FARM NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
5	MEADOWS NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
5	MENNONITE HOME, THE	06/30/2002	06/30/2001	06/30/2000
5	MESSIAH VILLAGE	06/30/2002	06/30/2001	06/30/2000
5	MIFFLIN CENTER	12/31/2002	12/31/2001	12/31/2000
5	MORAVIAN MANOR	12/31/2001	12/31/2000	12/31/1999
5	MOUNTAIN VIEW CARE CENTER	06/30/2002	06/30/2001	06/30/2000
5	ORANGEVILLE NURSING AND REHAB CENTER	12/31/2001	12/31/2000	06/30/1999
5	PERRY VILLAGE	12/31/2001	12/31/2000	12/31/1999
5	PHOEBE BERKS HEALTH CARE CENTER, INC	06/30/2002	06/30/2001	06/30/2000
5	PHOEBE SLATE BELT NURSING AND REHAB CTR	06/30/2002	06/30/2001	06/30/2000
5	PLEASANT VIEW RETIREMENT COMMUNITY	12/31/2001	12/31/2000	12/31/1999
5	QUARRYVILLE PRESBYTERIAN HOME	06/30/2002	06/30/2001	06/30/2000
5	REST HAVEN—YORK	06/30/2002	06/30/2001	06/30/2000
5	RIVERSTREET MANOR	12/31/2002	12/31/2001	12/31/2000
5	SAINT ANNE'S RETIREMENT COMMUNITY	06/30/2002	06/30/2001	06/30/2000
5	SAINT LUKE PAVILION	12/31/2001	12/31/2000	12/31/1999
5	SAINT MARY'S EAST	12/31/2001	12/31/2000	12/31/1999
5	SHIPPENSBURG HEALTH CARE CENTER	12/31/2001	12/31/2000	12/31/1999
5	SPRUCE MANOR NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
5	SUMMIT HEALTH CARE CENTER, INC	12/31/2001	12/31/2000	12/31/1999
5	SUSQUEHANNA LUTHERAN VILLAGE	12/31/2001	12/31/2000	12/31/1999
5	TAYLOR NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
5	TWINBROOK MEDICAL CENTER	06/30/2002	06/30/2001	06/30/2000
5	VILLA TERESA	12/31/2001	12/31/2000	12/31/1999
5	WEATHERWOOD—CARBON COUNTY NH & REHAB CTR	12/31/2001	12/31/2000	12/31/1999
5	WESLEY VILLAGE	12/31/2001	12/31/2000	12/31/1999
PG5	Resident Care Median	Other Resident Rltd Median	Administrative Median	
	\$76.13	\$29.60	\$14.84	
PG5	Resident Care Price	Other Resident Rltd Price	Administrative Price	
	\$89.07	\$33.15	\$15.43	

## NOTICES

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<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
6	ABINGTON CREST NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
6	AUDUBON VILLA	12/31/2001	12/31/2000	06/30/1999
6	BALANCED CARE BLOOMSBURG	06/30/2002	06/30/2001	06/30/2000
6	BALL PAVILION, THE	06/30/2002	06/30/2001	06/30/2000
6	BARBARA J. EGAN NURSING AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
6	BETHANY VILLAGE RETIREMENT CENTER	12/31/2001	12/31/2000	12/31/1999
6	BEVERLY HEALTHCARE—BLUE RIDGE MOUNTAIN	12/31/2001	12/31/2000	12/31/1999
6	BEVERLY HEALTHCARE—CAMP HILL	12/31/2001	12/31/2000	12/31/1999
6	BEVERLY HEALTHCARE—ERIE	12/31/2001	12/31/2000	12/31/1999
6	BONHAM NURSING CENTER	12/31/2001	12/31/2000	12/31/1999
6	BUTLER VALLEY MANOR	12/31/2001	12/31/2000	06/30/1999
6	CALVARY FELLOWSHIP HOMES, INC	06/30/2002	06/30/2001	06/30/2000
6	CARBONDALE NURSING HOME	12/31/2001	12/31/2000	12/31/1999
6	CHAPEL POINTE AT CARLISLE	12/31/2001	12/31/2000	12/31/1999
6	CHURCH OF GOD HOME, INC	12/31/2001	12/31/2000	12/31/1999
6	COUNTRY MEADOWS NURSING CENTER—BETHLEHEM	12/31/2001	12/31/2000	12/31/1999
6	CUMBERLAND CROSSINGS RETIREMENT COMM	06/30/2002	06/30/2001	06/30/2000
6	DAVIS MANOR	06/30/2002	06/30/2001	06/30/2000
6	DENVER NURSING HOME	12/31/2001	12/31/2000	06/30/1999
6	ECC RETIREMENT VILLAGE—STONERIDGE CAMPUS	12/31/2001	12/31/1999	12/31/1998
6	FOREST PARK HEALTH CENTER	12/31/2001	12/31/2000	12/31/1999
6	FOREST VIEW	06/30/2002	06/30/2001	06/30/2000
6	GREEN RIDGE HEALTH CARE CENTER, LLC	12/31/2001	12/31/2000	06/30/1999
6	GUARDIAN ELDER CARE CENTER	12/31/2001	12/31/2000	12/31/1999
6	HAMPTON HOUSE	06/30/2002	06/30/2001	06/30/2000
6	HERITAGE HOUSE	06/30/2002	06/30/2001	06/30/2000
6	HOLY FAMILY RESIDENCE	12/31/2001	12/31/2000	12/31/1999
6	HOMELAND CENTER	06/30/2002	06/30/2001	06/30/2000
6	HOMESTEAD VILLAGE, INC	06/30/2002	06/30/2001	06/30/2000
6	KEPLER HOME, INC, THE	12/31/2001	12/31/2000	12/31/1999
6	KINKORA PYTHIAN HOME	06/30/2002	06/30/2001	06/30/2000
6	LAKESIDE NURSING CENTER	12/31/2001	12/31/2000	06/30/1999
6	LANDIS HOMES	06/30/2002	06/30/2001	06/30/2000
6	LAURELS HEALTH AND REHAB AT KINGSTON	06/30/2002	06/30/2001	06/30/2000
6	LAURELS HEALTH AND REHAB AT MID VALLEY	06/30/2002	06/30/2001	06/30/2000
6	LEBANON VALLEY HOME THE	12/31/2001	12/31/2000	12/31/1999
6	LUTHER ACRES MANOR	12/31/2001	12/31/2000	12/31/1999
6	LUTHER CREST NURSING FACILITY	12/31/2001	12/31/2000	12/31/1999
6	LUTHERAN NRSG AND REHAB CTR-SPRENKLE DR	12/31/2001	12/31/2000	12/31/1999
6	MANCHESTER PRESBYTERIAN LODGE	12/31/2001	12/31/2000	12/31/1999

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
6	MANORCARE HEALTH SVCS—ELIZABETHTOWN	12/31/2001	12/31/2000	12/31/1999
6	MARY ELLEN CONVALESCENT HOME, INC	06/30/2002	06/30/2001	06/30/2000
6	MERCY CENTER NURSING UNIT, INC	12/31/2001	12/31/2000	12/31/1999
6	MIDDLETOWN HOME, THE	12/31/2002	12/31/2001	12/31/2000
6	MILFORD SENIOR CARE AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
6	MILLCREEK MANOR	06/30/2002	06/30/2001	06/30/2000
6	MILLVILLE HEALTH CENTER	12/31/2001	12/31/2000	06/30/1999
6	MISERICORDIA CONVALESCENT HOME	12/31/2001	12/31/2000	12/31/1999
6	MORAVIAN SPRINGS HEALTH CENTER	06/30/2002	06/30/2001	06/30/2000
6	MOSSER NURSING HOME	06/30/2002	06/30/2001	06/30/2000
6	MOUNT HOPE DUNKARD BRETHERN CHURCH HOME	06/30/2002	06/30/2001	06/30/2000
6	MOUNTAIN REST NURSING HOME	06/30/2002	06/30/2001	06/30/2000
6	NIPPLE CONVALESCENT HOME	12/31/2001	12/31/2000	12/31/1999
6	NORMANDIE RIDGE	12/31/2001	12/31/2000	12/31/1999
6	OSPREY RIDGE HEALTHCARE AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
6	PALMYRA NURSING HOME	12/31/2001	12/31/2000	06/30/1999
6	PINNACLE HEALTH ECF	06/30/2002	06/30/2001	06/30/2000
6	PRAXIS ALZHEIMER'S FACILITY	12/31/2001	12/31/2000	06/30/1999
6	PRESBYTERIAN LODGE	12/31/2001	12/31/2000	12/31/1999
6	RHEEMS NURSING AND REHABILITATION CENTER	12/31/2001	12/31/2000	12/31/1999
6	SAINT LUKE MANOR	12/31/2001	12/31/2000	12/31/1999
6	SAINT MARY'S VILLA NURSING HOME, INC	12/31/2001	12/31/2000	12/31/1999
6	SARAH A REED RETIREMENT CENTER, THE	06/30/2002	06/30/2001	06/30/2000
6	SARAH A TODD MEMORIAL HOME	12/31/2001	12/31/2000	12/31/1999
6	SMITH HEALTH CARE, LTD	06/30/2002	06/30/2001	06/30/2000
6	SPANG CREST MANOR	12/31/2001	12/31/2000	12/31/1999
6	STONEBRIDGE HEALTH AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
6	SWAIM HEALTH CENTER	12/31/2001	12/31/2000	12/31/1999
6	THORNWALD HOME	12/31/2001	12/31/2000	12/31/1999
6	TWIN OAKS NURSING HOME	12/31/2001	12/31/2000	06/30/1999
6	UNITED CHRISTIAN CHURCH HOME	12/31/2002	12/31/2001	12/31/2000
6	UNITED ZION RETIREMENT COMMUNITY	12/31/2002	12/31/2001	12/31/2000
6	VILLAGE AT LUTHER SQUARE	12/31/2001	12/31/2000	12/31/1999
6	VILLAGE VISTA MANOR	12/31/2001	12/31/2000	12/31/1998
6	WESTMINSTER VILLAGE	12/31/2001	12/31/2000	12/31/1999
6	WYOMISSING NURSING AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
6	ZERBE SISTERS NURSING CENTER, INC.	06/30/2002	06/30/2001	06/30/2000
PG6	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$74.03	\$33.17		\$15.43
PG6	Resident Care Price	Other Resident Rltd Price		Administrative Price

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
		\$86.62	\$37.15	\$16.05
<i>Median Peer Group</i>	<i>ProviderName</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
8	ALTOONA CENTER FOR NURSING CARE	12/31/2001	12/31/2000	12/31/1999
8	ARBUTUS PARK MANOR	06/30/2002	06/30/2001	06/30/2000
8	BEVERLY HEALTHCARE—HILLVIEW	12/31/2001	12/31/2000	12/31/1999
8	CENTRE CREST HOME	12/31/2001	12/31/2000	12/31/1999
8	CHURCH OF THE BRETHREN HOME	06/30/2002	06/30/2001	06/30/2000
8	GARVEY MANOR	12/31/2001	12/31/2000	12/31/1999
8	HOMEWOOD AT MARTINSBURG PA INC	12/31/2001	12/31/2000	12/31/1999
8	LAUREL WOOD CARE CENTER	12/31/2001	12/31/2000	12/31/1999
8	MANORCARE HEALTH SVCS—JERSEY SHORE	12/31/2002	12/31/2001	12/31/2000
8	MANORCARE HEALTH SVCS—WILLIAMSPORT NORTH	12/31/2001	12/31/2000	12/31/1999
8	MEADOW VIEW NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
8	MORRISONS COVE HOME	12/31/2001	12/31/2000	12/31/1999
8	ORCHARD MANOR, INC	06/30/2002	06/30/2001	06/30/2000
8	ROSE VIEW CENTER	06/30/2002	06/30/2001	06/30/2000
8	SAINT PAUL HOMES	12/31/2001	12/31/2000	12/31/1999
8	SIEMONS' LAKEVIEW MANOR ESTATE	06/30/2002	06/30/2001	06/30/2000
8	SYCAMORE MANOR HEALTH CENTER	12/31/2001	12/31/2000	12/31/1999
8	UNIVERSITY PARK NURSING CENTER	12/31/2002	12/31/2001	12/31/1999
8	VALLEY VIEW HOME	12/31/2001	12/31/2000	12/31/1999
8	VALLEY VIEW NURSING CENTER	12/31/2001	12/31/2000	12/31/1999
8	WHITE CLIFF NURSING HOME	12/31/2001	12/31/2000	12/31/1999
8	WILLIAMSPORT HOME, THE	12/31/2001	12/31/2000	12/31/1999
8	WINDY HILL VILLAGE OF PRESBYTERIAN HOMES	12/31/2001	12/31/2000	12/31/1999
8	WOODLAND PLACE	12/31/2001	12/31/2000	12/31/1999
PG8	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$72.45	\$33.50		\$13.97
PG8	Resident Care Price	Other Resident Rltd Price		Administrative Price
	\$84.77	\$37.52		\$14.53
<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
9	BEVERLY HEALTHCARE—HAIDA	12/31/2001	12/31/2000	12/31/1999
9	BEVERLY HEALTHCARE—MEYERSDALE	12/31/2001	12/31/2000	12/31/1999
9	BEVERLY HEALTHCARE—RICHLAND	12/31/2001	12/31/2000	12/31/1999
9	CLEPPER MANOR	12/31/2001	12/31/2000	12/31/1999
9	COUNTRYSIDE CONVAL HOME LTD PARTNERSHIP	06/30/2002	06/30/2001	06/30/2000
9	EPWORTH MANOR	12/31/2001	12/31/2000	12/31/1999
9	GOOD SAMARITAN NSG CARE CTR—JOHNSTOWN	06/30/2002	06/30/2001	06/30/2000
9	GROVE MANOR	06/30/2002	06/30/2001	06/30/2000

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
9	HOSPITALITY CARE CENTER OF HERMITAGE INC	12/31/2001	12/31/2000	12/31/1999
9	JOHN XXIII HOME	12/31/2001	12/31/2000	12/31/1999
9	LAUREL VIEW VILLAGE	06/30/2002	06/30/2001	06/30/2000
9	LUTHERAN HOME AT HOLLIDAYSBURG, THE	12/31/2001	12/31/2000	12/31/1999
9	LUTHERAN HOME AT JOHNSTOWN, THE	12/31/2001	12/31/2000	12/31/1999
9	MANORCARE HEALTH SVCS—WILLIAMSPORT SOUTH	12/31/2001	12/31/2000	12/31/1999
9	MORAN'S HOME, INC	12/31/2001	12/31/2000	12/31/1999
9	NUGENT CONVALESCENT HOME	12/31/2001	12/31/2000	12/31/1999
9	PRESBYTERIAN HOME OF GREATER JOHNSTOWN	12/31/2001	12/31/2000	12/31/1999
9	PRESBYTERIAN HOMES-PRESBYTERY—HUNTINGDON	12/31/2002	12/31/2001	12/31/2000
9	THE PATRIOT, A CHOICE COMMUNITY	12/31/2001	12/31/2000	12/31/1999
9	TRINITY LIVING CENTER	06/30/2002	06/30/2000	06/30/1999
PG9	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$62.37	\$30.54		\$12.58
PG9	Resident Care Price	Other Resident Rltd Price		Administrative Price
	\$72.97	\$34.20		\$13.08
<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
11	ARMSTRONG COUNTY HEALTH CENTER	12/31/2001	12/31/2000	12/31/1999
11	BEACON RIDGE, A CHOICE COMMUNITY	12/31/2002	12/31/2001	12/31/2000
11	BEVERLY HEALTHCARE—SHIPPENVILLE	12/31/2001	12/31/2000	12/31/1999
11	BEVERLY HEALTHCARE—STROUD	12/31/2001	12/31/2000	12/31/1999
11	BEVERLY HEALTHCARE—WILLIAM PENN	12/31/2001	12/31/2000	12/31/1999
11	BRADFORD COUNTY MANOR	12/31/2001	12/31/2000	12/31/1999
11	BRADFORD MANOR	12/31/2001	12/31/2000	12/31/1999
11	BROAD ACRES HEALTH AND REHAB CENTER	12/31/2002	12/31/2001	12/31/2000
11	BROAD MOUNTAIN NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
11	CHRIST THE KING MANOR	06/30/2002	06/30/2001	06/30/2000
11	CLARVIEW NURSING AND REHAB CENTER	12/31/2002	12/31/2001	12/31/2000
11	COMMUNITIES AT INDIAN HAVEN	12/31/2001	12/31/2000	12/31/1999
11	CRAWFORD COUNTY CARE CENTER	12/31/2001	12/31/2000	12/31/1999
11	DUBOIS NURSING HOME	06/30/2002	06/30/2001	06/30/2000
11	ELK HAVEN NURSING HOME	06/30/2002	06/30/2001	06/30/2000
11	ELLEN MEMORIAL HEALTH CARE CENTER	06/30/2002	06/30/2001	06/30/2000
11	FALLING SPRING NURSING AND REHAB CENTER	12/31/2001	12/31/2000	12/31/1999
11	FOREST CITY NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
11	GOLDEN HILL NURSING HOME, INC	06/30/2002	06/30/2001	06/30/2000
11	GREEN ACRES—ADAMS COUNTY NSG & REHAB CTR	12/31/2001	12/31/2000	12/31/1999

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
11	GREEN HOME, INC, THE	06/30/2002	06/30/2001	06/30/2000
11	HERITAGE NURSING HOME, INC	06/30/2002	06/30/2001	06/30/2000
11	HIGHLANDS CARE CENTER, THE	12/31/2001	12/31/1999	12/31/1997
11	HOMETOWN NURSING AND REHAB CENTER	12/31/2002	12/31/2001	12/31/1999
11	INDIAN CREEK NURSING CENTER	06/30/2002	06/30/2001	06/30/2000
11	JEFFERSON MANOR HEALTH CENTER	06/30/2002	06/30/2001	06/30/2000
11	JULIA POUND CARE CENTER	12/31/2001	12/31/2000	12/31/1999
11	JULIA RIBAUDO SENIOR SERVICES LLC	12/31/2002	12/31/2001	12/31/2000
11	KITTANNING CARE CENTER	12/31/2001	12/31/2000	12/31/1999
11	KRAMM HEALTHCARE CENTER, INC	06/30/2002	06/30/2001	06/30/2000
11	KRAMM NURSING HOME, INC	06/30/2002	06/30/2001	06/30/2000
11	MANORCARE HEALTH SVCS—CHAMBERSBURG	12/31/2001	12/31/2000	12/31/1999
11	MANORCARE HEALTH SVCS—POTTSVILLE	12/31/2002	12/31/2001	12/31/2000
11	MANORCARE HEALTH SVCS—SUNBURY	12/31/2001	12/31/2000	12/31/1999
11	MENNO-HAVEN, INC.	12/31/2001	12/31/2000	12/31/1999
11	MOUNT CARMEL NURSING AND REHAB CENTER	12/31/2002	12/31/2001	12/31/1999
11	MOUNTAIN LAUREL NRC	06/30/2002	06/30/2001	06/30/2000
11	NOTTINGHAM VILLAGE	12/31/2001	12/31/2000	12/31/1999
11	OHESON MANOR	12/31/2001	12/31/2000	12/31/1999
11	OIL CITY PRESBYTERIAN HOME	12/31/2001	12/31/2000	12/31/1999
11	ORWIGSBURG CENTER	06/30/2002	06/30/2001	06/30/2000
11	PENN LUTHERAN VILLAGE	12/31/2001	12/31/2000	12/31/1999
11	PENNKNOHLL VILLAGE NURSING HOME	12/31/2001	12/31/2000	12/31/1999
11	PLEASANT VALLEY MANOR, INC	12/31/2001	12/31/2000	12/31/1999
11	QUINCY UNITED METHODIST HOME	12/31/2001	12/31/2000	12/31/1999
11	REST HAVEN	12/31/2001	12/31/2000	12/31/1999
11	RIDGEVIEW ELDER CARE REHAB CENTER	12/31/2001	12/31/1998	12/31/1997
11	RIVERWOODS	12/31/2001	12/31/2000	12/31/1999
11	ROLLING FIELDS, INC	12/31/2001	12/31/2000	12/31/1999
11	ROLLING MEADOWS	06/30/2002	06/30/2001	06/30/2000
11	ROUSE WARREN COUNTY HOME	12/31/2001	12/31/2000	12/31/1999
11	SCHUYLKILL CENTER	06/30/2002	06/30/2001	06/30/2000
11	SENA-KEAN MANOR	12/31/2001	12/31/2000	12/31/1999
11	SETON MANOR INC	06/30/2002	06/30/2001	06/30/2000
11	SHENANDOAH MANOR NURSING CENTER	12/31/2002	12/31/2001	12/31/1999
11	SUGAR CREEK STATION SKILLED NSG & REHAB	12/31/2001	12/31/2000	12/31/1999
11	SUSQUE VIEW HOME, INC	12/31/2001	12/31/2000	12/31/1999
11	SWEDEN VALLEY MANOR	12/31/2001	12/31/2000	12/31/1999
11	TREMONT HEALTH AND REHABILITATION CENTER	06/30/2002	06/30/2001	06/30/2000
11	VALLEY VIEW HAVEN, INC	12/31/2001	12/31/2000	12/31/1999
11	WARREN MANOR	12/31/2001	12/31/2000	12/31/1999
11	WAYNE WOODLANDS MANOR	06/30/2002	06/30/2001	06/30/2000



<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
11	WESBURY UNITED METHODIST COMMUNITY	12/31/2001	12/31/2000	12/31/1999
11	WOODLAND RETIREMENT CENTER	12/31/2002	12/31/2001	12/31/2000
PG11	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$66.60	\$30.27		\$13.25
PG11	Resident Care Price	Other Resident Rltd Price		Administrative Price
	\$77.92	\$33.90		\$13.78
<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
12	AVALON NURSING CENTER	06/30/2002	06/30/2000	06/30/1999
12	BEVERLY HEALTHCARE—CAMBRIDGE SPRINGS	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—CLARION	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—FAYETTEVILLE	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—GETTYSBURG	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—KINZUA VALLEY	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—MEADVILLE	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—MOUNTAIN VIEW	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—OIL CITY	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—TITUSVILLE	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—WARREN	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—WAYNESBURG	12/31/2001	12/31/2000	12/31/1999
12	BEVERLY HEALTHCARE—YORK TERRACE	12/31/2001	12/31/2000	12/31/1999
12	BRADFORD ECUMENICAL HOME, INC	12/31/2001	12/31/2000	12/31/1999
12	BROOKLINE MANOR	12/31/2001	12/31/2000	12/31/1999
12	BROOKMONT HEALTHCARE CENTER LLC	06/30/2002	06/30/2001	06/30/2000
12	BUFFALO VALLEY LUTHERAN VILLAGE	12/31/2001	12/31/2000	12/31/1999
12	CARING PLACE, THE	06/30/2002	06/30/2001	06/30/2000
12	CARLETON SENIOR CARE AND REHAB CENTER	12/31/2001	12/31/1999	12/31/1998
12	DAR WAY NURSING HOME, INC	06/30/2002	06/30/2001	06/30/2000
12	DONAHOE MANOR	06/30/2002	06/30/2001	06/30/2000
12	DR ARTHUR CLIFTON MCKINLEY HEALTH CENTER	06/30/2002	06/30/2001	06/30/2000
12	EMMANUEL CENTER FOR NURSING AND REHAB	12/31/2001	12/31/2000	12/31/1999
12	FRIENDLY NURSING HOME—PITMAN	06/30/2002	06/30/2001	06/30/2000
12	GETTYSBURG LUTHERAN NURSING REHAB	12/31/2001	12/31/2000	12/31/1999
12	GUY AND MARY FELT MANOR, INC	06/30/2002	06/30/2001	06/30/2000
12	HAVEN CONVALESCENT HOME, INC	12/31/2001	12/31/2000	12/31/1999
12	HIGHLAND VIEW	06/30/2002	06/30/2001	06/30/2000
12	HUNTINGDON NURSING AND REHAB CENTER	06/30/2002	06/30/2001	06/30/2000
12	JAMESON CARE CENTER	12/31/2001	12/31/2000	12/31/1999
12	LAKEVIEW SENIOR CARE AND LIVING CENTER	12/31/2001	12/31/1999	12/31/1998

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
12	LAUREL CARE NURSING AND REHAB CENTER	12/31/2001	06/30/2000	06/30/1999
12	LAUREL MANOR	06/30/2002	06/30/2001	06/30/2000
12	LOCUST GROVE RETIREMENT VILLAGE	12/31/2001	12/31/2000	12/31/1999
12	LOVING CARE NURSING CENTER INC	12/31/2001	12/31/2000	06/30/1998
12	LUTHERAN HOME AT KANE, THE	12/31/2001	12/31/2000	12/31/1999
12	MALTA HOME	12/31/2001	12/31/2000	12/31/1999
12	MANSION NURSING AND CONVALESCENT HOME	12/31/2001	12/31/2000	12/31/1999
12	MEADOW VIEW SENIOR LIVING CENTER	12/31/2001	12/31/1998	12/31/1996
12	MEDA NIPPLE CONVALESCENT HOME	12/31/2001	12/31/2000	12/31/1999
12	MENNO-HAVEN PENN HALL, INC	12/31/2001	12/31/2000	12/31/1999
12	MULBERRY SQUARE	12/31/2001	12/31/1998	12/31/1997
12	OVERLOOK MEDICAL CLINIC INC	12/31/2001	12/31/2000	12/31/1999
12	PAVILION AT BRMC	06/30/2002	06/30/2001	06/30/2000
12	ROLLING HILLS MANOR	06/30/2002	06/30/2001	06/30/2000
12	SAYRE HOUSE, INC	06/30/2002	06/30/2001	06/30/2000
12	SCENERY HILL MANOR	12/31/2001	12/31/2000	12/31/1999
12	SHENANGO PRESBYTERIAN HOME	12/31/2002	12/31/2001	12/31/2000
12	SHEPHERD'S CHOICE OF GETTYSBURG, THE	12/31/2001	12/31/2000	12/31/1999
12	SHOOK HOME, THE	12/31/2001	12/31/2000	12/31/1999
12	SILVER OAKS NURSING CENTER	12/31/2001	12/31/2000	12/31/1999
12	SNYDER MEMORIAL HEALTH CARE CENTER	12/31/2001	12/31/2000	12/31/1999
12	SUGAR CREEK REST	06/30/2002	06/30/2001	06/30/2000
12	TRINITY MISSION HEALTH AND REHAB	12/31/2001	12/31/2000	12/31/1999
12	WESTMINSTER WOODS AT HUNTINGDON	12/31/2002	12/31/2001	12/31/2000
12	ZENDT HOME, THE	06/30/2002	06/30/2001	06/30/2000
PG12	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$62.79	\$29.76		\$12.60
PG12	Resident Care Price	Other Resident Rltd Price		Administrative Price
	\$73.46	\$33.33		\$13.10
<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
13	FOX SUBACUTE CENTER	12/31/2001	12/31/2000	12/31/1999
13	GOOD SHEPHERD HOME LTC FACILITY, INC	06/30/2002	06/30/2001	06/30/2000
13	GOOD SHEPHERD HOME—BETHLEHEM	06/30/2002	06/30/2001	
13	INGLIS HOUSE	06/30/2002	06/30/2001	06/30/2000
13	MARGARET E. MOUL HOME	06/30/2002	06/30/2001	06/30/2000
PG13	Resident Care Median	Other Resident Rltd Median		Administrative Median
	\$129.29	\$65.65		\$41.51
PG13	Resident Care Price	Other Resident Rltd Price		Administrative Price
	\$151.27	\$73.53		\$43.17

<i>Median Peer Group</i>	<i>Provider Name</i>	<i>Most Recent Cost Report End Date</i>	<i>Second Most Recent Cost Report End Date</i>	<i>Third Most Recent Cost Report End Date</i>
14	ASHLAND REGIONAL LONG TERM CARE CENTER	06/30/2000	06/30/1999	06/30/1998
14	BARNES-KASSON COUNTY HOSPITAL SNF	06/30/2002	06/30/2001	06/30/2000
14	BERWICK RETIREMENT VILLAGE NRSNG CTR I	06/30/2001	06/30/2000	06/30/1998
14	BUCKTAIL MEDICAL CENTER	06/30/2002	06/30/2001	06/30/2000
14	CHARLES COLE MEMORIAL HOSPITAL ECF	06/30/2002	06/30/2001	06/30/2000
14	FULTON COUNTY MEDICAL CENTER LTCU	06/30/2002	06/30/2001	06/30/2000
14	GNADEN HUETTEN NURSING AND CONVAL CENTER	06/30/2002	06/30/2001	06/30/2000
14	JAMESON HOSPITAL TCU-SOUTH	06/30/2002	06/30/2001	06/30/2000
14	LOCK HAVEN HOSPITAL E.C.U.	06/30/2002	06/30/2001	06/30/2000
14	MEMORIAL HOSPITAL INC SNU	06/30/2002	06/30/2001	06/30/2000
14	MOSES TAYLOR HOSPITAL S.N.F.	06/30/2002	06/30/2001	06/30/2000
14	MUNCY VALLEY HOSPITAL SNU	06/30/2002	06/30/2001	06/30/2000
14	PINECREST MANOR	06/30/2002	06/30/2001	06/30/2000
14	PINNACLE HEALTH ECF HB	06/30/2002	06/30/2001	06/30/2000
14	PINNACLE HEALTH SNU—SEIDLE	06/30/2002	06/30/2001	06/30/2000
14	SOMERSET HOSPITAL CENTER FOR HEALTH	06/30/2002	06/30/2001	06/30/2000
14	ST LUKE'S MINERS MEMORIAL GERIATRIC CTR	06/30/2002	06/30/2001	06/30/2000
14	SUNBURY COMMUNITY HOSPITAL SNF	06/30/2002	06/30/2001	06/30/2000
14	WILLOWCREST	06/30/2002	06/30/2001	06/30/2000
PG14	Resident Care Median	Other Resident Rltd Median	Administrative Median	
	\$82.69	\$44.76	\$19.64	
PG14	Resident Care Price	Other Resident Rltd Price	Administrative Price	
	\$96.75	\$50.13	\$20.43	

[Pa.B. Doc. No. 05-1954. Filed for public inspection October 21, 2005, 9:00 a.m.]

## DEPARTMENT OF REVENUE

[Correction]

(f) Holders of tickets with a Cash symbol (CASH) play symbol and a prize symbol of \$500 (FIV HUN) appearing under the Cash symbol (CASH) play symbol in the same "GAME," on a single ticket, shall be entitled to a prize of \$500.

\* \* \* \* \*

[Pa.B. Doc. No. 05-1915. Filed for public inspection October 14, 2005, 9:00 a.m.]

### Pennsylvania Jolly Holidays Instant Lottery Game

A typographical error occurred in the document that appeared at 35 Pa.B. 5734, 5735 (October 15, 2005). The correct version of the rules for the game are as follows, with ellipses referring to the existing text of the notice:

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

\* \* \* \* \*

7. *Determination of Prize Winners:*

\* \* \* \* \*

## DEPARTMENT OF TRANSPORTATION

### Application for Lease of Right-of-Way

The Department of Transportation (Department), under the authority contained in section 2002(c) of The Administrative Code of 1929 (71 P. S. § 512(c)) and 67 Pa. Code

§ 495.4 (relating to application procedure), gives notice that an application to lease highway right-of-way has been submitted to the Department by Café Michelangelo, Inc., 11901 Bustleton Ave., Philadelphia, PA 19115 seeking to lease highway right-of-way located at Woodhaven Road, City of Philadelphia, Philadelphia County, 15,000 sq. ft. + adjacent to SR 1029 Section A04 for the purpose of parking.

Interested persons are invited to submit, within 30 days from the publication of this notice in the *Pennsylvania Bulletin*, written comments, suggestions and/or objections regarding the approval of this application to Andrew Warren, P. E., District Executive, Engineering District 6-0, Department of Transportation, 7000 Geerdes Boulevard, King of Prussia, PA 19406-1525, Attention: Amin Jackson, R/W.

Questions regarding this application or the proposed use should be directed to Amin Jackson, R/W, Real Estate Technician, 7000 Geerdes Boulevard, King of Prussia, PA 19406-1525, (610) 205-6514.

ALLEN D. BIEHLER, P. E.,  
Secretary

[Pa.B. Doc. No. 05-1955. Filed for public inspection October 21, 2005, 9:00 a.m.]

### Contemplated Sale of Land No Longer Needed for Transportation Purposes

The Department of Transportation (Department), under section 2003(e)(7) of The Administrative Code of 1929 (71 P. S. § 513(e)(7)), intends to sell certain land owned by the Department.

The following properties are available for sale by the Department.

Parcel No. 97—Ross Township, Allegheny County. This parcel contains approximately  $0.17 \pm$  acre or 7,414  $\pm$  square feet of unimproved land located on Connie Drive, a residential street situated below and between Perrysville Avenue and the Perrysville Avenue entrance/exit ramps of SR 0279-N in Ross Township, Allegheny County. The estimated fair market value of the parcel is \$5,200.

Parcel No. 69—Ohio Township, Allegheny County. This parcel contains approximately  $96.82 \pm$  acres of unimproved land located adjacent to I-279 (SR 00279) south of the interstate overpass of Mt. Nebo Road (SR 4022) in Ohio Township, Allegheny County. The estimated fair market value of the parcel is \$494,000.

Interest public entities are invited to express their interest in purchasing these sites within 30 calendar days from the date of publication of this notice to H. Daniel Cessna, P. E., District Executive, Department of Transportation, Engineering District 11-0, 45 Thoms Run Road, Bridgeville, PA 15017.

ALLEN D. BIEHLER, P. E.,  
Secretary

[Pa.B. Doc. No. 05-1956. Filed for public inspection October 21, 2005, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Actions Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10:30 a.m., Thursday, October 6, 2005, and announced the following:

*Regulation Deemed Approved under section 5(g) of the Regulatory Review Act—Effective October 5, 2005*

Department of Transportation #18-399: Permit Agents (amends 67 Pa. Code Chapter 65)

State Board of Psychology #16A-6316: Biennial Renewal Fee Increase (amended 49 Pa. Code § 41.12)

*Regulation Approved:*

State Board of Education #6-280: Pupil Personnel Services and Students (deletes 22 Pa. Code Chapter 7 and amends 22 Pa. Code Chapter 12)

### Approval Order

Public Meeting held  
October 6, 2005

*Commissioners Voting:* John R. McGinley, Jr., Esq., Chairperson, by phone; Alvin C. Bush, Vice Chairperson, by phone; Arthur Coccodrilli, Acting Chairperson; John F. Mizner, Esq.; Murray Ufberg, Esq.

*State Board of Education—Pupil Personnel Services and Students; Regulation No. 6-280*

On November 7, 2003, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Education (Board). This rulemaking deletes Chapter 7 and amends Chapter 12 of 22 Pa. Code. The proposed regulation was published in the November 22, 2003 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on October 21, 2004. On November 9, 2004, the Board withdrew the regulation. On February 4, 2005, the Board resubmitted the final-form regulation. On March 1, 2005, the Board withdrew the regulation. On September 6, 2005, the Board resubmitted the final-form regulation. On September 12, 2005, the Board simultaneously withdrew and resubmitted the final-form regulation.

This regulation amends provisions related to student rights and responsibilities and student services to make them consistent with current statutory provisions and case law.

We have determined this regulation is consistent with the statutory authority of the Board (24 P. S. § 26-2603-(B)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

*By Order of the Commission:*

This regulation is approved.

JOHN R. MCGINLEY, Jr.,  
Chairperson

[Pa.B. Doc. No. 05-1957. Filed for public inspection October 21, 2005, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Application for Domestic Certificate of Authority

School Boards Insurance Company of Pennsylvania, Inc. has applied for a Certificate of Authority to operate as a domestic stock casualty insurance company in this Commonwealth. The filing was made under The Insurance Company Law of 1921 (40 P. S. §§ 341—991.2466). Persons wishing to comment on the application 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*. Written statements must include the name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Robert Brackbill, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557, rbrackbill@state.pa.us.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 05-1958. Filed for public inspection October 21, 2005, 9:00 a.m.]

## MILK MARKETING BOARD

### 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 December 7, 2005, at 9:30 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 continuation of the Class I over-order premium that is scheduled to expire on December 31, 2005, and whether an adjustment should be made to the level of the over-order premium.

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 4 p.m. on November 18, 2005, 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 4 p.m. on November 18, 2005, notification of their wish to be included as a party.

By 4 p.m. on November 29, 2005, each party shall file with the Board seven copies and ensure receipt by all other parties of one copy of:

1. A list of witnesses who will testify for the party, 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.

2. Each exhibit to be presented, including testimony to be offered in written form.

The Board may exclude witnesses or exhibits of a party that fails to comply with the 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.

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 4 p.m. on November 18, 2005.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

KEITH BIERLY,  
*Secretary*

[Pa.B. Doc. No. 05-1959. Filed for public inspection October 21, 2005, 9:00 a.m.]

### Hearing and Presubmission Schedule for All Milk Marketing Areas; Petroleum-Based Product Costs; Paper Container Costs

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 December 7, 2005, at 9 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: (1) the cost of petroleum-based products, such as milk crates, used in the processing, packaging and distribution of milk; and (2) the cost of paper milk containers. In each milk marketing area, evidence shall be based on the audited costs of the cross section of milk dealers used at the most recent cost replacement hearing for the area. Cost information shall be based on October 2005 data.

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 4 p.m. on November 18, 2005, 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 4 p.m. on November 18, 2005, notification of their wish to be included as a party.

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 copies of each document for the use of nonparties attending the hearing.

1. By 4 p.m. on November 23, 2005, each party shall file with the Board six copies and serve on all other parties one copy of:

a. A list of witnesses who will testify for the party, 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.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on December 2, 2005, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal 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 who 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 4 p.m. on November 18, 2005.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

KEITH BIERLY,  
*Secretary*

[Pa.B. Doc. No. 05-1960. Filed for public inspection October 21, 2005, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources; Doc. No. M-00051865**

Public Meeting held  
September 29, 2005

*Commissioners Present:* Wendell F. Holland, Chairperson, statement follows; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzigrilli; Terrance J. Fitzpatrick

### Final Order

*By the Commission:*

The Alternative Energy Portfolio Standards Act of 2004, 73 P. S. §§ 1648.1—1648.8 (“Act 213” or the “Act”), includes demand side management, energy efficiency and load management programs and technologies (“DSM/EE”)

among the resources eligible for participation in Pennsylvania's alternative energy market. The Commission previously announced that it would be issuing standards governing the tracking and verification of DSM/EE measures undertaken for purposes of compliance with Act 213. *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Doc. No. M-00051865 (Order entered March 25, 2005) (“Implementation Order”). By Tentative Order entered June 24, 2005, we issued proposed standards for enabling the participation of DSM/EE in Pennsylvania's alternative energy market and requested comments within sixty days. Responses were received from eleven interested parties.

### BACKGROUND AND HISTORY OF THIS PROCEEDING

On November 30, 2004, Governor Edward Rendell signed Act 213 into law. Generally, Act 213 requires that electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”) include a specific percentage of electricity from alternative resources in the generation that they sell to Pennsylvania customers. The level of alternative energy required gradually increases according to a fifteen year schedule found in Act 213, as clarified in the Implementation Order. While Act 213 does not mandate exactly which resources must be utilized and in what quantities, certain minimum thresholds must be met for the use of Tier I and Tier II resources. DSM/EE was included within the definition of “Alternative Energy Sources” in Section 1648.2 of Act 213, 73 P. S. § 1648.2:

(12) Demand side management consisting of the management of customer consumption of electricity or the demand for electricity through the implementation of:

(i) energy efficiency technologies, management practices or other strategies in residential, commercial, institutional or government customers that reduce electricity consumption by those customers;

(ii) load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand, including pump storage technologies; or

(iii) industrial by-product technologies consisting of the use of a by-product from an industrial process, including the reuse of energy from exhaust gases or other manufacturing by-products that are used in the direct production of electricity at the facility of a customer.

DSM/EE resources have been assigned to the Tier II category pursuant to Section 2 of Act 213.

The Pennsylvania General Assembly recognized that the inclusion of DSM/EE in the category of eligible alternative resources would present certain challenges not implicated by the utilization of other resources. Accordingly, the Commission was directed to establish standards for the verification and tracking of DSM/EE measures well in advance of the commencement of the first Act 213 reporting year on June 1, 2006:

The commission shall within 120 days of the effective date of this act develop a depreciation schedule for alternative energy credits created through demand side management, energy efficiency and load management technologies and shall develop standards for tracking and verifying savings from energy efficiency, load management and demand-side management

measures. The commission shall allow for a 60-day public comment period and shall issue final standards within 30 days of the close of the public comment period.

73 P. S. § 1648.3(e) (11)

As Act 213 went into effect on February 28, 2005, the Commission was obligated to issue these standards by June 28, 2005. Section 1648.3(e) (10) of Act 213, 73 P. S. § 1648.3(e)(10), requires the Commission to eventually include these standards in a proposed rulemaking.

On March 3, 2005, the Commission convened the first meeting of the Alternative Energy Portfolio Standards Working Group ("AEPS WG"). The AEPS WG was established in order to provide a forum for considering the technical standards, business rules and regulatory framework necessary for Act 213's successful implementation. The Commission charged the AEPS WG with, among other tasks, studying the development of rules necessary for the participation of DSM/EE resources in the alternative energy market. The AEPS WG was to report back to the Commission on its findings within a period of time that allowed the Commission to meet the June 28, 2005 deadline.

The AEPS WG has met periodically since March 3 to discuss and develop standards for the participation of DSM/EE resources. Interested parties first had the opportunity to file comments on this topic in response to an issues list developed by Commission staff. After reviewing these comments, Commission staff issued a draft proposal on May 2, 2005, for consideration by the AEPS WG. Stakeholders provided commentary on the details of this proposal, and offered specific recommendations for changes to the draft. By Tentative Order entered on June 24, 2005, the Commission issued its initial proposal for enabling the participation of DSM/EE. The final order being released today has been revised to reflect those comments and suggestions.

### DISCUSSION

As stated in our Tentative Order, clear rules will be critical for the future success of this initiative as well as for the ease of implementing the Act. The Commission will be guided by the following principles in establishing the rules for DSM/EE measures:

- Market values for individual measures or measures installed as group program items.
- Easily understood rules with minimal transaction and administrative costs.
- Reliance upon existing state and federal protocols.
- Equitable opportunities for residential, commercial and industrial customers to benefit directly.

The Commission will use two means to the extent appropriate to establish qualifications for Alternative Energy Credits ("Credits")—a catalog approach for standard energy savings measures and general guidelines for metered and custom energy savings measures.

#### A. Standard Energy Savings Measures

The first method is a "catalog approach" that will establish the number of Credits available for standard energy savings measures. The intent of this approach is to address standard energy savings measures that are available to a large number of customers through retail consumer-products and whose effects cannot be directly metered. Retail consumer-products to be addressed by the catalog approach include items such as energy efficient appliances, light bulbs, and HVAC equipment.

Most commenters agreed with the catalog approach as a way to track standard energy savings and the use of general guidelines for metered and custom energy saving measures. To be clear, it is our intent that these standards and the custom measures will evolve and change over time as we gain practical experience and receive comments based on application and the passage of time.

The energy savings from these standard measures are referred to as "deemed savings." Deemed savings are ranges of energy savings above standard usage ranges from a particular application or equipment over a given period of time.

Standard energy saving measures are detailed in the Technical Reference Manual ("TRM"), follows as Annex A. The TRM provides a consistent framework for calculating deemed savings for a menu of energy efficiency measures using supported assumptions and customer data as input values in industry-accepted algorithms. The framework in this TRM was developed for the purpose of estimating annual energy savings for a limited selection of energy efficient technologies and measures.

The TRM builds on comparable protocols used in other states, including Vermont and New Jersey. Input values and baselines are based on the best available measured or industry data, and will be updated periodically with new information or Pennsylvania-specific information over time. The limited selection of energy efficient technologies may be expanded over time as well.

Specific comments regarding measures within the Technical Reference Manual (TRM) were submitted by the Energy Association of Pennsylvania ("EAPA"), the Energy Coordinating Agency ("ECA"), Lawrence G. Spielvogel, PPL Electric Utilities, Inc. ("PPL"), Exelon, Department of Environmental Protection ("DEP"), Commission on Economic Opportunity ("CEO"), Office of Small Business Advocate, Office of Consumer Advocate, U.S. Steel and Industrial Energy Consumers of PA ("IECPA").

The EAPA and Spielvogel commented that the "Motors" (all sizes) hours of operation should be adjusted for Pennsylvania from 4500 annual operating hours to 4599 annual operating hours for industrial operations and 2502 annual operating hours for commercial operations. Furthermore motors purchased for back-up or stand-by purposes should not be eligible to receive renewable energy credits. These suggested changes more accurately reflect seasonal or consistent monthly use. We accept these comments and have incorporated the figures and language in the TRM.

EAPA commented that commercial lighting should have a reduced measure life from 20 years to 15 years to reflect more frequent remodeling practices, we accept the change in the standard and have modified the standards accordingly.

#### B. Metered and Custom Measures

The second group of measures not covered by the catalog approach involves custom or metered measures and requires general guidelines for qualification and availability of Credits from these measures. Metered measures require actual metered usage or self-generation. An example of a metered measure would be distributed generation where the value of the savings measure—i.e. generator output—can be directly measured.

Custom measures include measures that may be considered too complex or unique to be included in the catalog. It also would include measures that may involve metered data, but require additional assumptions to

arrive at a "typical" level of savings as opposed to an exact measurement. An example includes a time-of-use pricing program that determines savings by comparing actual metered usage to typical load profiles of similar customers.

The qualification for Credits and availability of Credits from metered and custom savings measures will need to be determined on a case-by-case basis. As a result, a set of guidelines that can facilitate such determinations and promote consistency among those determinations are necessary. The EAPA and Exelon suggested that LIURP programs should be eligible for consideration for renewable energy credit ("REC") under Tier II. We agree that EDCs' LIURP programs should be eligible to receive REC credits as a DSM program, but the EDCs' must provide the energy savings evaluations as a custom program. The utility will receive the REC credits for LIURP because of ratepayer funding.

Set forth as follows are general guidelines for custom and metered measures, which are a combination of proposals filed by the EAPA and US Steel in the DSM/EE WG process. The EAPA provided further comments with regard to measures that shift load. They suggest that full credit should be given for kilowatt hours shifted as well as for any conservation effect. We agree that demand side response programs that promote load shifting from high use and high cost periods to low use and low price periods is an important objective in a market environment. These programs should receive REC credits. The EAPA also recommended all measures that involved generation shall directly measure kilowatt hours generated using an approved metering device. We agree that approved metering devices should be required for accountability of energy and credits.

#### *General Guidelines*

1. Entities eligible to apply for credits include, but are not limited to: retail customers who have undertaken measures, EDCs' or EGSs' whose customers are participating in tariffed programs or retail contracts and who, in accordance with the language of the tariff or contract, have acquired the right to any Credits resulting from operations under the tariff or contract; and equipment or service providers who have provided equipment or services to customers pursuant to a contract that gives the provider the right to any Credits resulting from the installation of that equipment or use of the service. All measures that shift load shall be given full credit for kilowatt hours shifted and saved.

2. The Commission will at a later date provide for the requirements of a Program Administrator as required by the Act. The Commission will also establish by way of regulation the duties and responsibilities of the Administrator. Eligible entities may submit an application to the Administrator of the Alternative Energy Credits Program requesting a review for qualifying status. The application must be signed by the customer or his representative and be supported by an affidavit or verification.

3. The metered or custom measure contained in the application may incorporate or use any of the technologies or load management practices defined as Tier II resource contained in Act 213. The metered or custom measure identified in the application may use or incorporate equipment installed prior to the effective date of Act 213.

4. The application shall include adequate documentation to fully describe the DSM or EE measures

installed or proposed by the customer and an explanation of how the installed facilities qualify for alternative energy credits under the Act. All measures that involve generation shall directly measure kilowatt hours generated using an approved metering device.

5. The application must include a proposed evaluation plan by which the Administrator may evaluate the effectiveness of the DSM or EE measures provided by the installed facilities. All assumptions contained in the proposed evaluation plan should be identified, explained and supported by documentation where possible. The applicant may propose incorporating tracking and evaluation measures using existing data streams currently in use provided that they permit the Administrator to evaluate the program using the reported data.

6. To the extent possible, the DSM or EE measures identified in the application should be verified by the meter readings submitted to the Administrator.

7. The Administrator may request additional information as needed.

8. The application will be approved if the Administrator determines that the proposal is consistent with the DSM and EE definitions contained in the Act and that the proposed evaluation measures will accurately identify the effectiveness of the proposed custom measure.

9. Denial of any application must be fully explained by the Administrator.

10. The Administrator's decision is subject to review by the Commission.

#### *C. Depreciation Schedule for Alternative Energy Credits*

Section 1648.3(e)(11) of Act 213 requires the Commission to develop a depreciation schedule for alternative energy credits created through demand side management, energy efficiency and load management technologies. In implementing this portion of the Act for standard energy savings measures, each savings measure in the TRM is assigned a "measure life" that inherently reflects depreciation. A measure life represents the average expected life of the equipment, including adjustments for possible early removal or remodeling. The measure life simply determines the number of years to count savings for the particular measure.

The depreciation reference in Section 1648.3(e)(11) appears related to aging assets and is designed to capture the decline in energy savings and correspondingly reduce the production of alternative energy credits to reflect the decreased savings over time. The Commission believes it should adopt flexible depreciation standards for alternative energy credits produced through demand side management since not all of the technologies involve the use of depreciating assets.

The Commission believes that an estimated depreciation factor is unneeded for measures that are separately metered. The reason is because the meter will reflect any decline in the performance of the equipment; therefore, eliminating the need to estimate a depreciation factor.

#### *D. Qualifying Measures*

Section 1648.2 of Act 213 defines alternative energy sources to include existing and new sources for the production of electricity by demand side management and self-generation. Thus, the Commission determines that standard, metered and custom energy savings measures



that were installed prior to implementation of the Act shall be eligible to qualify for credits on a moving forward basis.

For the standard energy savings measures that are contained in the TRM, this principle will be accounted for through each technology's measure life. For newly installed measures, the savings should be claimed over the entire measure life, even if common practice changes during the life of the measure. For previously installed measures, the savings should only extend for the remaining life of the measure. For example, if a measure with a ten year life was installed two years prior to the effective date of Act 213, the savings should only be counted for eight years.

In implementing this portion of Act 213 for demand side management technologies, US Steel advocated in their comments to the DSM/EE WG that the Commission should avoid using a baseline calculation that only recognizes subsequent incremental on-site electricity production or conservation. US Steel argues that using a theoretical baseline calculation and recognizing only the incremental production would be inconsistent with the Act's direction to recognize existing sources and unfair to customers who have acted early and responsibly to implement energy conservation prior to the Act.

It appears reasonable and consistent with Act 213 to recognize all of the electricity produced on-site by these facilities and not require a calculation of incremental production over a baseline figure reflecting historic energy production.<sup>1</sup> At the same time, implementation issues arise with such an approach. Currently, the PJM Interconnection, LLC ("PJM") Economic Load Response Program utilizes the Customer Baseline Load ("CBL")<sup>2</sup> calculation as a way for those customers that wish to measure load reductions to compare metered load against an estimate of what metered load would have been absent the reduction. The CBL method for determining customer baseline for reductions uses the average of highest five days of prior ten peak days. The PJM Demand Side Response Working Group is transitioning from the CBL baseline to an approach called the "Firm Power Contract" for resale, which uses a daily submitted schedule as the baseline for judging curtailment. Comments received from EAPA pointed out that the PJM CBL method is not practical for tracking long-term DSM measures but intended for short-term DSR activities. Firm Power Contract methodology may be considered if it becomes available in the near future, in the meantime all measures will be verified on a case by case basis. In the near term, we will accept IECPA's comments and determine as part of the application process, the benefit by measure. Such measures will be compared to industry standard applications or equipment.

Qualifying measures must also comply with Section 1648.4 of the Act, 73 P. S. § 1648.4, which, one, prohibits the double-counting of resources towards both Pennsylvania's and another state's portfolio standard, and, two, establishes a geographic eligibility requirement. The Commission intends to address the issues of double-counting and geographic eligibility for both DSM/EE and

<sup>1</sup> While we accept US Steel's argument on the inappropriateness of using a baseline calculation generally, the Commission acknowledges that Section 1648.3(e)(7), 73 P. S. § 1648.3(e)(7), of Act 213 places a restriction on the banking of credits during the cost-recovery period for certain alternative resource utilization that predated Act 213's effective date. Rules for the banking of alternative energy credits and any restrictions on this practice will be separately addressed by the Commission at a later date in this implementation proceeding.

<sup>2</sup> *Operating Agreement of the PJM Interconnection, LLC*, pages 151-166. The Customer Baseline calculation provision is set forth in Original Sheet Nos. 156-158 and the Weather Sensitivity provisions are set forth in Original Sheet Nos. 158-159.

all other alternative resources at the same time later in this implementation proceeding.

#### *E. Implementation and Maintenance of TRM and General Guidelines*

The Commission's Bureau of Conservation, Economics and Energy Planning ("CEEP") will oversee the implementation, maintenance and periodic update of the TRM for the catalog measures and the general guidelines for the metered and custom measures. Updates to the TRM and general guidelines may be made on an annual basis or more or less frequently. The alternative energy credits program administrator will manage the credit certification process.<sup>3</sup> The administrator will a) award certificates based on its review and verification of applications; b) maintain a log of issues and opportunities for improvement; and c) communicate issues to the Bureau of CEEP. The DSM/EE WG will convene periodically as requested by the Bureau of CEEP to provide input and recommendations on issues that may arise, and to develop enhancements and revisions to the TRM and general guidelines.

### CONCLUSION

This Order represents the first step in establishing a comprehensive regulatory framework for the successful implementation of Act 213. We extend our thanks to the participants in the AEPS WG and those who provided comments in helping the Commission to comply with Act 213's aggressive implementation schedule.

*Therefore,*

*It Is Ordered That:*

1. A copy of this Order and Annex A shall be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all jurisdictional electric distribution companies, all licensed electric generation suppliers, the Pennsylvania Department of Environmental Protection, and all other members of the Alternative Energy Portfolio Standards Working Group.

2. The Secretary shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

### Annex A

## ENERGY—EFFICIENCY AND DSM RULES FOR PENNSYLVANIA'S ALTERNATIVE ENERGY PORTFOLIO STANDARD

### TECHNICAL REFERENCE MANUAL

September 7, 2005

### INTRODUCTION

The Technical Reference Manual (TRM) provides specific efficiency thresholds and formulas to use in calculating energy-efficiency electricity savings (kWh) for Pennsylvania's Alternative Energy Portfolio Standard (AEPS). The technologies presently included in the TRM are those that are relatively easy to characterize and require few inputs for calculating savings. Other technologies may be added to the TRM over time to provide a common reference for claiming electricity savings.

<sup>3</sup> The administrator will use a credits registry to monitor compliance and provide reports to the Commission, as required by 73 P. S. § 1648.3(e)(8). The Commission continues to study PJM's Generation Attribute Tracking System. PJM continues to improve the functionality of GATS, including its ability to manage data on behind the meter applications, which will be critical to the integration of DSM/EE measures into this market.

Technologies are presented in two sections, each with several end use categories:

- Residential Technologies
  - o HVAC
  - o Lighting
  - o Appliances
- Commercial and Industrial Technologies
  - o HVAC
  - o Motors
  - o Lighting

A separate table is provided for each technology with an algorithm for calculating annual kWh savings, along with the required input assumptions to be used in the algorithm. Baseline—based on expected Pennsylvania code or federal standards in 2006—are included in the tables for the benchmark from which to count savings for the efficient measure in the algorithm. Efficiency thresholds are included for setting the minimum efficiency requirement for equipment to receive a savings credit. For illustrative purposes, example calculations are provided in the tables to show savings for measures with specific efficiencies, size or other characteristics. For proposed measures with characteristics different than the example calculation, the savings should be calculated with the algorithm using the input parameters for the particular measure.

Each technology table also provides a measure life assumption for determining the number of years to count savings. For newly installed measures the savings should be claimed over the entire measure life, even if common practice changes during the life of the measure. For previously installed measures, the savings should only extend for the remaining life of the measure. For example, if a measure with a 10 year life was installed 2 years ago, the savings should only be counted for 8 years.

Measure lifetimes represent the average expected life of the equipment, including adjustments for possible early removal or remodeling. In many cases the engineering technical lifetime is greater than the measure lifetime in the table used for claiming savings. The lifetime assumptions are based on lifetime assumptions used in other savings protocols, such as Vermont's Technical Reference Manual.

#### **PURPOSE**

The framework in this TRM was developed for the purpose of estimating annual energy savings for a limited selection of energy efficient technologies and measures. The framework will provide guidance to an Administrator responsible for award of certified credits ("certificates"). The framework requires a verified number of qualifying installed units to which savings apply that would be documented by the Applicant and validated by the Administrator in awarding certificates.

#### **GENERAL FRAMEWORK**

In general, energy and demand savings will be estimated using customer data as input values in algorithms in the protocols, tracking systems, and information from application forms, worksheets, and field tools.

To receive energy efficiency credits, applicants must submit information in sufficient detail to support objective verification of performance, including physical verification of the measures installed, and certified performance of the measures (e.g. efficiency ratings) through Project Registration Forms and Technical Support Worksheets, which may include information as follows:

#### **Customer Information**

Company Name  
Contact Person/Title  
Address  
City  
State  
Zip  
Phone  
Fax  
E-mail

#### **Project Location and Information**

Address  
City  
State  
Zip  
Utility Account No

#### **Project Participant Information**

Company Name  
Contact Person/Title  
Address  
City  
State  
Zip  
Phone  
Fax  
E-mail

#### **Contractor/Vendor Information**

Company  
Contact Name  
Street Address  
City  
State  
Zip  
Telephone Number

#### **Energy Efficient Equipment Information**

(in sufficient detail to allow verification), i.e.:

Manufacturer  
Model No  
Efficiency rating  
Quantity  
Capacity  
etc.

#### **Proof of Purchase**

Receipts, UPC, etc.

The Administrator will review application forms and tracking systems for all measures and conduct field inspections on a sample of installations. For some programs and jobs (e.g., custom, large process, large and complex comprehensive design), post-installation review and on-site verification of a sample of application forms and installations will be used to ensure the reliability of site-specific savings estimates.

#### **BASELINE ESTIMATES**

Baseline values are based on the performance of new standard efficiency equipment. Baselines will be updated periodically to reflect changing codes, and common market practices.

#### **ENERGY SAVINGS IN CURRENT AND FUTURE YEARS; DEEMED LIFE OF MEASURES / MEASURE LIVES**

Credits will apply in equal annual amounts corresponding to either: a) PJM planning years or b) calendar years beginning with the year deemed appropriate by the

Administrator, and lasting for the approved life of the measure as documented in Appendix 1.

Measure lives are assigned to each technology to reflect a number of factors, including: 1) the expected life of the technology according to industry life-expectancy statistics, 2) the likelihood units are actually installed and operational (i.e. are not purchased for stand-by service or removed through future facility upgrades), and 3) the

persistence of savings (e.g. through energy substitution or supplement).

#### PROSPECTIVE APPLICATION OF CERTIFICATES

The TRM will be updated periodically based on new information and available data, and then applied prospectively for future years. Such updates will not alter the number of credits, once awarded, by the Administrator.

### SAVINGS CALCULATIONS WITH EXAMPLES RESIDENTIAL TECHNOLOGIES

#### Central Air Conditioner

Current typical central air-conditioner (CAC) market	SEER 11
Federal standard as of January 2006 ( <b>baseline</b> )	SEER 13
Minimum threshold for credit—ENERGY STAR	SEER 14
Estimated savings credit for a SEER 14 installation <sup>1</sup>	119 kWh
Estimated savings credit for a SEER 15 installation <sup>1</sup>	222 kWh
Estimated savings credit per CAC if SEER 14 plus documented proper sizing, charge, flow through Manual J and site measurements <sup>2</sup>	407 kWh
Estimated savings credit per CAC if SEER 15 plus documented proper sizing, charge, flow through Manual J and site measurements <sup>2</sup>	473 kWh
Change in usage calculation <sup>3</sup>	$\Delta\text{kWh} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{SEER}_{\text{bas}} - 1/\text{SEER}_{\text{effi}}) \times \text{FLH}$
Credit for proper sizing, charge and air flow <sup>4</sup>	$\Delta\text{kWh} = 0.20 \times ((3 \text{ tons} ( 12,000)/1,000) \times (1/\text{SEER}) \times \text{FLH}$
Measure life <sup>3</sup>	18 years

[1] Based on 600 annual full load operating hours (FLH), ARI adjusted cooling hours.

[2] Based on reduction from 3 tons to 2.5 tons.

[3] From Efficiency Vermont Technical Reference Manual.

[4] Based on the LIPA Cool Homes Program (20% of improper sizing use).

#### Heat Pump

Current typical central air-conditioner (CAC) market	SEER 11
Federal standard as of January 2006 ( <b>baseline</b> )	SEER 13 HSPF 7.7
Minimum threshold for credit	SEER 14 HSPF 9.0
Estimated savings credit for a SEER 14 installation <sup>1</sup>	119 kWh
Estimated savings credit for a SEER 15 installation <sup>1</sup>	222 kWh
Estimated savings credit for a HSPF 9.0 installation <sup>2</sup>	1013 kWh
Estimated savings credit if SEER 14 plus documented proper sizing, charge, flow through Manual J and site measurements <sup>3</sup>	407 kWh
Estimated savings credit if SEER 15 plus documented proper sizing, charge, flow through Manual J and site measurements <sup>3</sup>	473 kWh
Change in usage calculation <sup>4</sup>	$\Delta\text{kWh}_{\text{cool}} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{SEER}_{\text{bas}} - 1/\text{SEER}_{\text{effi}}) \times \text{FLH}_{\text{cool}}$ $\Delta\text{kWh}_{\text{heat}} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{HSPF}_{\text{bas}} - 1/\text{HSPF}_{\text{effi}}) \times \text{FLH}_{\text{heat}}$
Credit for proper sizing, charge and air flow <sup>5</sup>	$\Delta\text{kWh} = 0.20 \times ((3 \text{ tons} \times 12,000)/1,000) \times (1/\text{SEER}) \times \text{FLH}_{\text{cool}}$
Measure life <sup>4</sup>	18 years

[1] Based on 600 annual cooling full load operating hours (FLH), ARI adjusted cooling hours.

[2] Based on 1,500 annual heating FLH, ARI adjusted heating hours (excludes electric resistance hours).

[3] Based on reduction from 3 tons to 2.5 tons.

[4] From Efficiency Vermont Technical Reference Manual.

[5] Based on the LIPA Cool Homes Program (20% of improper sizing use), only cooling savings.

**Compact Fluorescent Lamps**

Baseline wattage purchased <sup>1</sup>	15	20	25	30
Assumed wattage replaced <sup>2</sup>	60	75	75	100
Assumed avg hrs/day use <sup>3</sup>	3.2	3.2	3.2	3.2
Estimated annual kWh savings credit	52.5	64.2	58.4	81.7
Savings calculation	$\Delta\text{kWh} = \frac{(\text{Watts}_{\text{bas}} - \text{Watts}_{\text{eff}})}{1,000} \times \text{HOURS}$	$\Delta\text{kWh} = \frac{(\text{Watts}_{\text{bas}} - \text{Watts}_{\text{eff}})}{1,000} \times \text{HOURS}$	$\Delta\text{kWh} = \frac{(\text{Watts}_{\text{bas}} - \text{Watts}_{\text{eff}})}{1,000} \times \text{HOURS}$	$\Delta\text{kWh} = \frac{(\text{Watts}_{\text{bas}} - \text{Watts}_{\text{eff}})}{1,000} \times \text{HOURS}$
Measure life <sup>4</sup>	6 years	6 years	6 years	6 years

[1] Based on typical CFL wattages

[2] Based on typical lumen equivalent substitutions

[3] From light logger study update to Impact Evaluation of the Massachusetts, Rhode Island, and Vermont 2003 Residential Lighting Programs by Nexus Market Research, Inc. and RLW Analytics, Inc., October 1, 2004

[4] Based on presumed 6,000 hour lamp life although many lamps have a rated 10,000 hour life

**Compact Fluorescent Fixtures**

Baseline wattage purchased <sup>1</sup>	15	20	25	30
Assumed wattage replaced <sup>2</sup>	60	75	75	100
Assumed avg hrs/day use <sup>3</sup>	2.0	2.0	2.0	2.0
Estimated annual kWh savings credit	32.8	40.1	36.5	51.1
Savings calculation	$\Delta\text{kWh} = \frac{(\text{Watts}_{\text{bas}} - \text{Watts}_{\text{eff}})}{1,000} \times \text{HOURS}$	$\Delta\text{kWh} = \frac{(\text{Watts}_{\text{bas}} - \text{Watts}_{\text{eff}})}{1,000} \times \text{HOURS}$	$\Delta\text{kWh} = \frac{(\text{Watts}_{\text{bas}} - \text{Watts}_{\text{eff}})}{1,000} \times \text{HOURS}$	$\Delta\text{kWh} = \frac{(\text{Watts}_{\text{bas}} - \text{Watts}_{\text{eff}})}{1,000} \times \text{HOURS}$
Measure life <sup>4</sup>	20 years	20 years	20 years	20 years

[1] Based on typical CFL wattages

[2] Based on typical lumen equivalent substitutions

[3] From light logger study update to Impact Evaluation of the Massachusetts, Rhode Island, and Vermont 2003 Residential Lighting Programs by Nexus Market Research, Inc. and RLW Analytics, Inc., October 1, 2004

[4] Based on presumed 40,000 hour ballast life adjusted for replacements due to remodeling, etc.

**Energy Star Clothes Washers**

Baseline <sup>1</sup>	MEF 1.14
Minimum threshold for credit—ENERGY STAR <sup>2</sup>	MEF 1.73
Estimated savings credit <sup>3</sup>	329 kWh
Change in usage calculation <sup>5</sup>	$\Delta\text{kWh} = ((\text{volume}/\text{MEF}_{\text{bas}}) \times 379) - ((\text{volume}/\text{MEF}_{\text{eff}}) \times 379)$
Measure life <sup>4</sup>	14

[1] Minimum 1.04 MEF adjusted for average sales MEF

[2] Minimum 1.42 ENERGY STAR MEF adjusted for average ENERGY STAR MEF

[3] Includes estimated weighted average electric water heating and dryer savings

[4] From Efficiency Vermont Technical Reference Manual

[5] Weighted average volume calculated to be 2.9 cu.ft. from AHAM data; weighted average 379 cycles per year from December 2000 DOE Technical Support Document for Clothes Washers

**Energy Star Refrigerators**

Baseline <sup>1</sup>	Minimum federal standard
Minimum threshold for credit—ENERGY STAR <sup>2</sup>	ENERGY STAR standard
Estimated savings credit	85.5 kWh
Change in usage calculation <sup>4</sup>	$\Delta\text{kWh} = (\text{Watts}_{\text{bas}} - \text{Watts}_{\text{eff}}) / (1,000 \times \text{HOURS})$
Measure life <sup>3</sup>	17

[1] Value varies based on adjusted volume

[2] 15% higher efficiency than minimum federal standard

[3] From Efficiency Vermont Technical Reference Manual

[4] Assumed typical 5,000 operating hours per year

**Energy Star Dish Washer**

Baseline <sup>1</sup>	Minimum federal standard
Minimum threshold for credit—ENERGY STAR <sup>2</sup>	ENERGY STAR standard
Estimated savings credit	68.6 kWh
Change in usage calculation <sup>4</sup>	$\Delta\text{kWh} = (113.3 \times \text{electric water heating frequency})$
Measure life <sup>3</sup>	13

[1] 0.46 energy factor

[2] 0.58 energy factor

[3] From Efficiency Vermont Technical Reference Manual

[4] assumes typical 264 cycles per year, 0.5 gal reduced water consumption per cycle and 43.6% electric water heating frequency as cited in Efficiency Vermont Technical Reference Manual

**COMMERCIAL AND INDUSTRIAL TECHNOLOGIES****< 5.4 Ton Unitary/Split HVAC Systems (5 ton example)**

Current typical unitary HVAC market	SEER 11
Federal standard as of January 2006 (baseline)	SEER 13
Minimum threshold for credit	SEER 14
Estimated savings credit per Unitary HVAC if install SEER 14	330 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{SEER}_{\text{bas}} - 1/\text{SEER}_{\text{effi}}) \times \text{FLH}$
Measure life	15 years

[1] Based on 1,000 annual full load operating hours (FLH), from Optimal Energy

**≥ 5.4 to < 11.25 Ton Unitary/Split HVAC Systems (10 ton example)**

Baseline (Penn. Code, IECC 2003)	EER 10.1
Minimum threshold for credit (CoolChoice)	EER 11
Estimated savings credit per Unitary HVAC if install EER 11	972 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{EER}_{\text{bas}} - 1/\text{EER}_{\text{effi}}) \times \text{FLH}$
Measure life	15 years

[1] Based on 1,000 annual full load operating hours (FLH), from Optimal Energy

**≥ 11.25 to < 20 Ton Unitary/Split HVAC Systems (15 ton example)**

Baseline (Penn. Code, IECC 2003)	EER 9.3
Minimum threshold for credit (CoolChoice)	EER 10.8
Estimated savings credit per Unitary HVAC if install EER 11	2,688 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{EER}_{\text{bas}} - 1/\text{EER}_{\text{effi}}) \times \text{FLH}$
Measure life	15 years

[1] Based on 1,000 annual full load operating hours (FLH), from Optimal Energy

**≥ 20 to < 30 Ton Unitary/Split HVAC Systems (25 ton example)**

Baseline (Penn. Code, IECC 2003)	EER 9.0
Minimum threshold for credit (CoolChoice)	EER 10.0
Estimated savings credit per Unitary HVAC if install EER 10	3,333 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{EER}_{\text{bas}} - 1/\text{EER}_{\text{effi}}) \times \text{FLH}$
Measure life	15 years

[1] Based on 1,000 annual full load operating hours (FLH), from Optimal Energy

**< 5.4 Ton Air-to-Air Heat Pump Systems (5 ton example)**

Current typical unitary HVAC market	SEER 11
Federal standard as of January 2006 (baseline)	SEER 13 HSPF 7.7
Minimum threshold for credit	SEER 14 HSPF 9.0
Estimated savings credit per Unitary HVAC if install SEER 14 and HSPF 9.0	330 kWh cooling 1,812 kWh heating
Change in usage calculation <sup>1</sup>	$\Delta kWh_{cool} = ((\text{tons} \times 12,000)/1,000) \times (1/SEER_{bas} - 1/SEER_{effi}) \times FLH_{cool}$ $\Delta kWh_{heat} = ((\text{tons} \times 12,000)/1,000) \times (1/HSPF_{bas} - 1/HSPF_{effi}) \times FLH_{heat}$
Measure life	15 years

[1] Based on 1,000 annual cooling full load operating hours (FLH) and 1,610 heating FLH, from Optimal Energy

**≥ 5.4 to < 11.25 Ton Air-to-Air Heat Pump Systems (10 ton example)**

Baseline (Penn. Code, IECC 2003)	EER 10.1
Minimum threshold for credit (CoolChoice)	EER 11
Estimated savings credit per Unitary HVAC if install EER 11	972 kWh cooling 1,137 kWh heating
Change in usage calculation <sup>1</sup>	$\Delta kWh_{cool} = ((\text{tons} \times 12,000)/1,000) \times (1/EER_{bas} - 1/EER_{effi}) \times FLH_{cool}$ $\Delta kWh_{heat} = ((\text{tons} \times 12,000)/1,000) \times (1/EER_{bas} - 1/EER_{effi}) \times FLH_{heat}$
Measure life	15 years

[1] Based on 1,000 annual cooling full load operating hours (FLH) and 1,170 heating FLH, from Optimal Energy

**≥ 11.25 to < 20 Ton Air-to-Air Heat Pump Systems (15 ton example)**

Baseline (Penn. Code, IECC 2003)	EER 9.3
Minimum threshold for credit (CoolChoice)	EER 10.8
Estimated savings credit per Unitary HVAC if install EER 11	2,688 kWh cooling 3,145 kWh heating
Change in usage calculation <sup>1</sup>	$\Delta kWh_{cool} = ((\text{tons} \times 12,000)/1,000) \times (1/EER_{bas} - 1/EER_{effi}) \times FLH_{cool}$ $\Delta kWh_{heat} = ((\text{tons} \times 12,000)/1,000) \times (1/EER_{bas} - 1/EER_{effi}) \times FLH_{heat}$
Measure life	15 years

[1] Based on 1,000 annual cooling full load operating hours (FLH) and 1,170 heating FLH, from Optimal Energy

**≥ 20 to < 30 Ton Air-to-Air Heat Pump Systems (25 ton example)**

Baseline (Penn. Code, IECC 2003)	EER 9.0
Minimum threshold for credit (CoolChoice)	EER 10.0
Estimated savings credit per Unitary HVAC if install EER 10	3,333 kWh cooling 3,900 kWh heating
Change in usage calculation <sup>1</sup>	$\Delta kWh_{cool} = ((\text{tons} \times 12,000)/1,000) \times (1/EER_{bas} - 1/EER_{effi}) \times FLH_{cool}$ $\Delta kWh_{heat} = ((\text{tons} \times 12,000)/1,000) \times (1/EER_{bas} - 1/EER_{effi}) \times FLH_{heat}$
Measure life	15 years

[1] Based on 1,000 annual cooling full load operating hours (FLH) and 1,170 heating FLH, from Optimal Energy

**≤ 30 Ton Water Source Heat Pumps (10 ton example)**

Baseline (Penn. Code, IECC 2003)	EER 12.0
Minimum threshold for credit (CoolChoice)	EER 14.0
Estimated savings credit per Unitary HVAC if install EER	2,857 kWh cooling 4,700 kWh heating
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh}_{\text{cool}} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{EER}_{\text{bas}} - 1/\text{EER}_{\text{effi}}) \times \text{FLH}_{\text{cool}}$ $\Delta\text{kWh}_{\text{heat}} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{EER}_{\text{bas}} - 1/\text{EER}_{\text{effi}}) \times \text{FLH}_{\text{heat}}$
Measure life	15 years

[1] Based on 1,000 annual cooling full load operating hours (FLH) and 1,645 heating FLH, from Optimal Energy

**≤ 150 Ton Air Cooled Chiller (100 ton example)**

Baseline (Penn. Code, IECC 2003)	9.6 EER
Minimum threshold for credit	10.2 EER
Estimated savings credit per chiller for 10.2 EER	8,824 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{EER}_{\text{bas}} - 1/\text{EER}_{\text{effi}}) \times \text{FLH}$
Measure life	25 years

[1] Based on 1,200 annual full load operating hours (FLH), from Optimal Energy

**> 150 to < 300 Ton Air Cooled Chiller (200 ton example)**

Baseline (Penn. Code, IECC 2003)	8.5 EER
Minimum threshold for credit	10.2 EER
Estimated savings credit per chiller for 10.2 EER	55,180 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times 12,000)/1,000) \times (1/\text{EER}_{\text{bas}} - 1/\text{EER}_{\text{effi}}) \times \text{FLH}$
Measure life	25 years

[1] Based on 1,200 annual full load operating hours (FLH), from Optimal Energy

**≥ 30 to < 70 Ton Water Cooled Chiller (50 ton example)**

Baseline (Penn. Code, IECC 2003)	0.79 peak kW/ton
Minimum threshold for credit	0.75 peak kW/ton
Estimated savings credit per chiller for 0.75 kW/ton	2,407 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = (\text{tons} \times (\text{kW}/\text{ton}_{\text{bas}} - \text{kW}/\text{ton}_{\text{effi}}) \times \text{FLH}$
Measure life	25 years

[1] Based on 1,200 annual full load operating hours (FLH), from Optimal Energy

**≥ 70 to < 150 Ton Water Cooled Positive Displacement Chiller (100 ton example)**

Baseline (Penn. Code, IECC 2003)	0.84 peak kW/ton
Minimum threshold for credit	0.74 peak kW/ton
Estimated savings credit per chiller for 0.74 kW/ton	11,657 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times (\text{kW}/\text{ton}_{\text{bas}} - \text{kW}/\text{ton}_{\text{effi}}) \times \text{FLH}$
Measure life	25 years

[1] Based on 1,200 annual full load operating hours (FLH), from Optimal Energy

**≥ 70 to < 150 Ton Water Cooled Centrifugal Chiller (100 ton example)**

Baseline (Penn. Code, IECC 2003)	0.70 peak kW/ton
Minimum threshold for credit	0.65 peak kW/ton
Estimated savings credit per chiller for 0.65 kW/ton	6,384 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times (\text{kW}/\text{ton}_{\text{bas}} - \text{kW}/\text{ton}_{\text{effi}}) \times \text{FLH}$
Measure life	25 years

[1] Based on 1,200 annual full load operating hours (FLH), from Optimal Energy

**≥ 150 to < 300 Ton Water Cooled Centrifugal Chiller (200 ton example)**

Baseline (Penn. Code, IECC 2003)	0.63 IPLV kW/ton
Minimum threshold for credit	0.51 IPLV kW/ton
Estimated savings credit per chiller for 0.51 kW/ton	29,643 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times (\text{kW}/\text{ton}_{\text{bas}} - \text{kW}/\text{ton}_{\text{eff}})) \times \text{FLH})$
Measure life	25 years

[1] Based on 1,200 annual full load operating hours (FLH), from Optimal Energy

**≥ 150 to < 300 Ton Water Cooled Screw Chiller (200 ton example)**

Baseline (Penn. Code, IECC 2003)	0.71 IPLV kW/ton
Minimum threshold for credit	0.51 IPLV kW/ton
Estimated savings credit per chiller for 0.51 kW/ton	48,073 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times (\text{kW}/\text{ton}_{\text{bas}} - \text{kW}/\text{ton}_{\text{eff}})) \times \text{FLH})$
Measure life	25 years

[1] Based on 1,200 annual full load operating hours (FLH), from Optimal Energy

**≥ 300 to ≤ 1,000 Ton Water Cooled Chiller (500 ton example)**

Baseline (Penn. Code, IECC 2003)	0.58 IPLV kW/ton
Minimum threshold for credit	0.51 IPLV kW/ton
Estimated savings credit per chiller for 0.51 kW/ton	39,836 kWh
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{tons} \times (\text{kW}/\text{ton}_{\text{bas}} - \text{kW}/\text{ton}_{\text{eff}})) \times \text{FLH})$
Measure life	25 years

[1] Based on 1,200 annual full load operating hours (FLH), from Optimal Energy

**Motor 1,200 RPM, Open Drip Proof (ODP), (1 HP example)**

Current typical motor market	80.0%
Federal standard as of January 1, 2006 (EPAAct) (baseline) <sup>1</sup>	80.0%
Minimum threshold for credit	82.5%
Estimated savings credit per motor if install MotorUp minimum	95 kWh
Change in usage calculation <sup>2</sup>	$\Delta\text{kWh} = (\text{kW}_{\text{base}} - \text{kW}_{\text{effic}}) \times \text{HOURS}$ $\text{kW} = \text{HP} \times 0.746 \times (1/\text{efficiency}) \times \text{LF}$
Measure life	15 years

[1] See the tables by motor type, speed and HP of baseline efficiencies, minimum qualifying efficiencies, and incremental costs that follow these examples.

[2] Based on 2,502 annual operating hours; LF = default load factor of 0.75, from Efficiency Vermont 2004 Technical Reference Manual cannot be used for stand-by use.

**Motor 1,800 RPM, Open Drip Proof (ODP), (10 HP example)**

Current typical motor market	89.5%
Federal standard as of January 1, 2006 (EPAAct) (baseline) <sup>1</sup>	89.5%
Minimum threshold for credit	91.7%
Estimated savings credit per motor if install MotorUp minimum	675 kWh
Change in usage calculation <sup>2</sup>	$\Delta\text{kWh} = (\text{kW}_{\text{base}} - \text{kW}_{\text{effic}}) \times \text{HOURS}$ $\text{kW} = \text{HP} \times 0.746 \times (1/\text{efficiency}) \times \text{LF}$
Measure life	15 years

[1] See the tables by motor type, speed and HP of baseline efficiencies, minimum qualifying efficiencies, and incremental costs that follow these examples.

[2] Based on 2,502 annual operating hours; LF = default load factor of 0.75, from Efficiency Vermont 2004 Technical Reference Manual cannot be used for stand-by use.



**Motor 3,600 RPM, Open Drip Proof (ODP), (100 HP example)**

Current typical motor market	93.0%
Federal standard as of January 1, 2006 (EPAAct) (baseline) <sup>1</sup>	93.0%
Minimum threshold for credit	95.0%
Estimated savings credit per motor if install MotorUp minimum	5,699 kWh
Change in usage calculation <sup>2</sup>	$\Delta\text{kWh} = (\text{kW}_{\text{base}} - \text{kW}_{\text{effic}}) \times \text{HOURS}$ $\text{kW} = \text{HP} \times 0.746 \times (1/\text{efficiency}) \times \text{LF}$
Measure life	15 years

[1] See the tables by motor type, speed and HP of baseline efficiencies, minimum qualifying efficiencies, and incremental costs that follow these examples.

[2] Based on 2,502 annual operating hours; LF = default load factor of 0.75, from Efficiency Vermont 2004 Technical Reference Manual cannot be used for stand-by use.

**Motor 1,200 RPM, Totally Enclosed Fan Cooled (TEFC), (1 HP example)**

Current typical motor market	80%
Federal standard as of January 1, 2006 (EPAAct) (baseline) <sup>1</sup>	80%
Minimum threshold for credit	82.5%
Estimated savings credit per motor if install MotorUp minimum	95 kWh
Change in usage calculation <sup>2</sup>	$\Delta\text{kWh} = (\text{kW}_{\text{base}} - \text{kW}_{\text{effic}}) \times \text{HOURS}$ $\text{kW} = \text{HP} \times 0.746 \times (1/\text{efficiency}) \times \text{LF}$
Measure life	15 years

[1] See the tables by motor type, speed and HP of baseline efficiencies, minimum qualifying efficiencies, and incremental costs that follow these examples.

[2] Based on 4,599 annual operating hours; LF = default load factor of 0.75, from Efficiency Vermont 2004 Technical Reference Manual cannot be used for stand-by use.

**Motor 1,800 RPM, Totally Enclosed Fan Cooled (TEFC), (10 HP example)**

Current typical motor market	89.5%
Federal standard as of January 1, 2006 (EPAAct) (baseline) <sup>1</sup>	89.5%
Minimum threshold for credit	91.7%
Estimated savings credit per motor if install MotorUp minimum	675 kWh
Change in usage calculation <sup>2</sup>	$\Delta\text{kWh} = (\text{kW}_{\text{base}} - \text{kW}_{\text{effic}}) \times \text{HOURS}$ $\text{kW} = \text{HP} \times 0.746 \times (1/\text{efficiency}) \times \text{LF}$
Measure life	15 years

[1] See the tables by motor type, speed and HP of baseline efficiencies, minimum qualifying efficiencies, and incremental costs that follow these examples.

[2] Based on 4,599 annual operating hours; LF = default load factor of 0.75, from Efficiency Vermont 2004 Technical Reference Manual cannot be used for stand-by use.

**Motor 3,600 RPM, Totally Enclosed Fan Cooled (TEFC), (100 HP example)**

Current typical motor market	93.6%
Federal standard as of January 1, 2006 (EPAAct) (baseline) <sup>1</sup>	93.6%
Minimum threshold for credit	95.4%
Estimated savings credit per motor if install MotorUp minimum	5,075 kWh
Change in usage calculation <sup>2</sup>	$\Delta\text{kWh} = (\text{kW}_{\text{base}} - \text{kW}_{\text{effic}}) \times \text{HOURS}$ $\text{kW} = \text{HP} \times 0.746 \times (1/\text{efficiency}) \times \text{LF}$
Measure life	15 years

[1] See the tables by motor type, speed and HP of baseline efficiencies, minimum qualifying efficiencies, and incremental costs that follow these examples.

[2] Based on 4,599 annual operating hours; LF = default load factor of 0.75, from Efficiency Vermont 2004 Technical Reference Manual cannot be used for stand-by use.

**Motor Baseline Efficiencies Table**

Size Hp	Open Drip Proof (ODP)			Totally Enclosed Fan-Cooled (TEFC)		
	Speed (RPM)			Speed (RPM)		
	1,200	1,800	3,600	1,200	1,800	3,600
1	80.0%	82.5%	75.5%	80.0%	82.5%	75.5%
1.5	84.0%	84.0%	82.5%	85.5%	84.0%	82.5%
2	85.5%	84.0%	84.0%	86.5%	84.0%	84.0%
3	86.5%	86.5%	84.0%	87.5%	87.5%	85.5%
5	87.5%	87.5%	85.5%	87.5%	87.5%	87.5%
7.5	88.5%	88.5%	87.5%	89.5%	89.5%	88.5%
10	90.2%	89.5%	88.5%	89.5%	89.5%	89.5%
15	90.2%	91.0%	89.5%	90.2%	91.0%	90.2%
20	91.0%	91.0%	90.2%	90.2%	91.0%	90.2%
25	91.7%	91.7%	91.0%	91.7%	92.4%	91.0%
30	92.4%	92.4%	91.0%	91.7%	92.4%	91.0%
40	93.0%	93.0%	91.7%	93.0%	93.0%	91.7%
50	93.0%	93.0%	92.4%	93.0%	93.0%	92.4%
60	93.6%	93.6%	93.0%	93.6%	93.6%	93.0%
75	93.6%	94.1%	93.0%	93.6%	94.1%	93.0%
100	94.1%	94.1%	93.0%	94.1%	94.5%	93.6%
125	94.1%	94.5%	93.6%	94.1%	94.5%	94.5%
150	94.5%	95.0%	93.6%	95.0%	95.0%	94.5%
200	94.5%	95.0%	94.5%	95.0%	95.0%	95.0%

**Motor Minimum Qualifying Efficiencies Table**

Size Hp	Open Drip Proof (ODP)			Totally Enclosed Fan-Cooled (TEFC)		
	Speed (RPM)			Speed (RPM)		
	1,200	1,800	3,600	1,200	1,800	3,600
1	82.5%	85.5	77.0	82.5%	85.5%	77.0%
1.5	86.5%	86.5%	84.0%	87.5%	86.5%	84.0%
2	87.5%	86.5%	85.5%	88.5%	86.5%	85.5%
3	88.5%	89.5%	88.5%	89.5%	89.5%	86.5%
5	89.5%	89.5%	86.5%	89.5%	89.8%	88.5%
7.5	90.2%	91.0%	88.5%	91.0%	91.7%	89.5%
10	91.7%	91.7%	89.5%	91.0%	91.7%	90.2%
15	91.7%	93.0%	90.2%	91.7%	92.4%	91.0%
20	92.4%	93.0%	91.0%	91.7%	93.0%	91.0%
25	93.0%	93.6%	91.7%	93.0%	93.6%	91.7%
30	93.6%	94.1%	91.7%	93.0%	93.6%	91.7%
40	94.1%	94.1%	92.4%	94.1%	94.1%	92.4%
50	94.1%	94.5%	93.0%	94.1%	94.5%	93.0%
60	94.5%	95.0%	93.6%	94.5%	95.0%	93.6%
75	94.5%	95.0%	93.6%	95.5%	95.4%	93.6%
100	95.0%	95.4%	93.6%	95.0%	95.4%	94.1%
125	95.0%	95.4%	94.1%	95.0%	95.4%	95.0%
150	95.4%	95.8%	94.1%	95.8%	95.8%	95.0%
200	95.4%	95.8%	95.0%	95.8%	96.2%	95.4%

**Commercial Lighting—New Construction 20% Lighting Power Density (LPD) Reduction (20,000 sq. ft. Office Building example)**

Current typical new construction lighting market LPD—PA Energy Code (baseline)	2003 IECC (ASHRAE/IESNA 90.1-2001)
Assumed PA Energy Code upgrade as of April 1, 2007	2006 IECC (ASHRAE/IESNA 90.1-2004)
Minimum threshold for credit	Lighting Power Density (LPD) 20% < 2003 IECC (ASHRAE/IESNA 90.1-2001)
Estimated savings credit if installed LPD is 20% less than PA energy code, plus site inspection documents installed LPD	15,828 kWh (1.0 W/sq. ft. baseline)
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{W/sq. ft.}_{\text{base}} - \text{W/sq. ft.}_{\text{effic}})/1,000) \times \text{HOURS} \times \text{WHF}$
Measure life	15 years

[1] Based on 3,435 annual operating hours, From Efficiency Vermont 2004 Technical Reference Manual (see table of default lighting hours by building type below)

WHF = Waste heat factor for energy to account for cooling savings from efficient lighting. For a cooled space, the value is 1.15 (calculated as  $1 + 0.38/2.5$ ). Based on 0.29 ASHRAE Lighting waste heat cooling factor for Pittsburgh and 2.5 C.O.P. typical cooling system efficiency. For an uncooled space, the value is one. The default for this measure is a cooled space.

Factor from "Calculating lighting and HVAC interactions," Table 1, ASHRAE Journal November 1993.

**Commercial Lighting—New Construction 20% Lighting Power Density (LPD) Reduction (50,000 sq. ft. Retail example)**

Current typical new construction lighting market LPD—PA Energy Code (baseline)	2003 IECC (ASHRAE/IESNA 90.1-2001)
Assumed PA Energy Code upgrade as of April 1, 2007	2006 IECC (ASHRAE/IESNA 90.1-2004)
Minimum threshold for credit	Lighting Power Density (LPD) 20% < 2003 IECC (ASHRAE/IESNA 90.1-2001)
Estimated savings credit if installed LPD is 20% less than PA energy code, plus site inspection documents installed LPD	52,923 kWh (1.5 W/sq. ft. baseline)
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{W/sq. ft.}_{\text{base}} - \text{W/sq. ft.}_{\text{effic}})/1,000) \times \text{HOURS} \times \text{WHF}$
Measure life	15 years

[1] Based on 3,068 annual operating hours, From Efficiency Vermont 2004 Technical Reference Manual. (see table of default lighting hours by building type below)

WHF = Waste heat factor for energy to account for cooling savings from efficient lighting. For a cooled space, the value is 1.15 (calculated as  $1 + 0.38/2.5$ ). Based on 0.29 ASHRAE Lighting waste heat cooling factor for Pittsburgh and 2.5 C.O.P. typical cooling system efficiency. For an uncooled space, the value is one. The default for this measure is a cooled space.

Factor from "Calculating lighting and HVAC interactions," Table 1, ASHRAE Journal November 1993.

<i>Interior Lighting Operating Hours by Building Type</i>	
<i>Building Type</i>	<i>Annual Hours</i>
Office	3,435
Restaurant	4,156
Retail	3,068
Grocery/Supermarket	4,612
Warehouse	2,388
Element./Second. School	2,080
College	5,010
Health	3,392
Hospital	4,532
Hotel/Motel	2,697
Manufacturing	5,913
Source: From Impact Evaluation of Orange & Rockland's Small Commercial Lighting Program, 1993.	

**Commercial Lighting—Existing Buildings 4-Lamp Fluorescent Lighting Fixture (Office Building example)**

Current typical existing lighting market (baseline)	Standard T8 Lamp/Ballast System
Federal standard as of January 1, 2006	Energy Savings T12 (34 Watt) Lamps and Energy Efficient Magnetic Ballast
Minimum threshold for credit	High Performance (Super) T8 Lamp/Low Power Ballast System
Estimated savings credit for installing High Performance (Super) T8 Lamp/Low Power Ballast System	79 kWh (per fixture)
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{Watts}_{\text{base}} - \text{Watts}_{\text{effc}})/1,000) \times \text{HOURS} \times \text{WHF}$
Measure life	15 years

[1] Based on 3,435 annual operating hours, Efficiency Vermont 2004 Technical Reference Manual. (see table of default lighting hours by building type above)

WHF= Waste heat factor for energy to account for cooling savings from efficient lighting. For indoors, the value is 1.15 (calculated as  $1 + 0.38/2.5$ ). Based on 0.38 ASHRAE Lighting waste heat cooling factor for Pittsburgh and 2.5 C.O.P. typical cooling system efficiency. For outdoors, the value is one.

Factor from "Calculating lighting and HVAC interactions," Table 1, ASHRAE Journal November 1993

**Commercial Lighting—Existing Buildings 3-Lamp Fluorescent Lighting Fixture (Office Building example)**

Current typical existing lighting market (baseline)	Standard T8 Lamp/Ballast System
Federal standard as of January 1, 2006	Energy Savings T12 (34 Watt) Lamps and Energy Efficient Magnetic Ballast
Minimum threshold for credit	High Performance (Super) T8 Lamp/Low Power Ballast System
Estimated savings credit for installing High Performance (Super) T8 Lamp/Low Power Ballast System	63 kWh (per fixture)
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{Watts}_{\text{base}} - \text{Watts}_{\text{effc}})/1,000) \times \text{HOURS} \times \text{WHF}$
Measure life	15 years

[1] Based on 3,435 annual operating hours, Efficiency Vermont 2004 Technical Reference Manual. (see table of default lighting hours by building type above)

WHF= Waste heat factor for energy to account for cooling savings from efficient lighting. For indoors, the value is 1.15 (calculated as  $1 + 0.38/2.5$ ). Based on 0.38 ASHRAE Lighting waste heat cooling factor for Pittsburgh and 2.5 C.O.P. typical cooling system efficiency. For outdoors, the value is one.

Factor from "Calculating lighting and HVAC interactions," Table 1, ASHRAE Journal November 1993

**Commercial Lighting—Existing Buildings 2-Lamp Fluorescent Lighting Fixture (Office Building example)**

Current typical existing lighting market (baseline)	Standard T8 Lamp/Ballast System
Federal standard as of January 1, 2006	Energy Savings T12 (34 Watt) Lamps and Energy Efficient Magnetic Ballast
Minimum threshold for credit	High Performance (Super) T8 Lamp/Low Power Ballast System
Estimated savings credit for installing High Performance (Super) T8 Lamp/Low Power Ballast System	40 kWh (per fixture)
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{Watts}_{\text{base}} - \text{Watts}_{\text{effc}})/1,000) \times \text{HOURS} \times \text{WHF}$
Measure life	15 years

[1] Based on 3,435 annual operating hours, Efficiency Vermont 2004 Technical Reference Manual. (see table of default lighting hours by building type above)

WHF= Waste heat factor for energy to account for cooling savings from efficient lighting. For indoors, the value is 1.15 (calculated as  $1 + 0.38/2.5$ ). Based on 0.38 ASHRAE Lighting waste heat cooling factor for Pittsburgh and 2.5 C.O.P. typical cooling system efficiency. For outdoors, the value is one.

Factor from "Calculating lighting and HVAC interactions," Table 1, ASHRAE Journal November 1993

**Commercial Lighting—Existing Buildings 1-Lamp Fluorescent Lighting Fixture (Office Building example)**

Current typical existing lighting market (baseline)	Standard T8 Lamp/Ballast System
Federal standard as of January 1, 2006	Energy Savings T12 (34 Watt) Lamps and Energy Efficient Magnetic Ballast
Minimum threshold for credit	High Performance (Super) T8 Lamp/Low Power Ballast System
Estimated savings credit for installing High Performance (Super) T8 Lamp/Low Power Ballast System	28 kWh (per fixture)
Change in usage calculation <sup>1</sup>	$\Delta\text{kWh} = ((\text{Watts}_{\text{base}} - \text{Watts}_{\text{effc}})/1,000) \times \text{HOURS} \times \text{WHF}$
Measure life	15 years

[1] Based on 3,435 annual operating hours, Efficiency Vermont 2004 Technical Reference Manual. (see table of default lighting hours by building type above)

WHF= Waste heat factor for energy to account for cooling savings from efficient lighting. For indoors, the value is 1.15 (calculated as  $1 + 0.38/2.5$ ). Based on 0.38 ASHRAE Lighting waste heat cooling factor for Pittsburgh and 2.5 C.O.P. typical cooling system efficiency. For outdoors, the value is one.

Factor from "Calculating lighting and HVAC interactions," Table 1, ASHRAE Journal November 1993

**Statement of Chairperson Wendell F. Holland**

*Public Meeting September 29, 2005; SEP-2005-CEP-0002*

**Implementation of Alternative Energy Portfolio Standards Act of 2004; Doc. No. M-00051865**

By our action today, we reach a momentous milestone. We fulfill a major commitment in implementing the Alternative Energy Portfolio Standards Act that was signed into law by Governor Rendell and took effect on February 28, 2005. We are approving standards to track and verify demand management, energy efficiency and loan management programs, and technologies. These decisions will ensure Pennsylvania's leadership in the nation for including demand management and energy efficiency as part of alternative energy standards.

This action was achieved by a team effort which I believe is an excellent method of implementing complex legislation. Our process, by any standard, was open, fair and transparent. All interested stakeholders who sought to have input were given an opportunity to be heard. I would like to take this opportunity to thank the Alternative Energy Portfolio Standards Working Group that arrived at these standards. This working group was well-represented by members of the public and private sectors, and consisted of this Commonwealth's Department of Environment Protection, the electric distribution companies, the electric generation suppliers, industrial customers, the Office of Consumer Advocate, the Office of Small Business Advocate, and other stakeholders. These members of the working group have met regularly since March 2005.

I am sure my colleagues join me in recognizing that the Commission's action today represents a critical step in establishing a comprehensive regulatory framework for the successful implementation of the Alternative Energy Portfolio Standards Act. Ultimately, I believe that this law will bring new choices and new energy sources to Pennsylvania consumers.

[Pa.B. Doc. No. 05-1961. Filed for public inspection October 21, 2005, 9:00 a.m.]

**PUC Filing and Reporting Requirements on Local Exchange Carriers; Doc. No. M-00041857**

Public Meeting held  
September 9, 2005

*Commissioners Present:* Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane, dissenting—statement follows; Kim Pizzingrilli; Terrance J. Fitzpatrick, statement follows

**Final Implementation Order**

*By the Commission:*

On April 15, 2005, the Commission entered a Tentative Implementation Order (Tentative Order) determining which current reporting requirements should be maintained, streamlined or eliminated for Pennsylvania local exchange companies (LECs) in accordance with the Legislative Budget and Finance Committee's (LB & FC) November 17, 2004 Report (LB & FC Report) and Act 183.<sup>1</sup> Also, in its Tentative Order, the Commission requested comments on its preliminary determinations regarding the LECs' reporting requirements through a facilitated discussion and written comment period.

The Commission's Tentative Order was the result of a December 2004 Commission directive to the Law Bureau, the Bureau of Fixed Utility Services (FUS), and the Bureau of Consumer Services (BCS) to review the LB & FC Report regarding the reporting requirements for LECs and to submit a recommendation to the Commission regarding options to consolidate and/or streamline these reporting requirements. In accordance with this directive, the bureaus analyzed the LB & FC's specific recommendations, as well as the impact of newly-enacted Act 183, on the Commission's reporting requirements.

Based on our review of Act 183, the comments submitted in this matter and the LB & FC Report, the Commission directs the continuation, consolidation and/or elimination of certain filing and reporting requirements presently imposed on LECs operating in Pennsylvania in compliance with Act 183.

<sup>1</sup> 66 Pa.C.S. §§ 3011 et seq. (2005).

## Background

### 1. LB & FC Report

In June 2004, the Pennsylvania House of Representatives passed House Resolution 786, which directed the LB & FC to conduct a study of the filing and reporting requirements imposed on LECs operating in Pennsylvania and to report its findings. On November 17, 2004, the LB & FC adopted its Report entitled *PUC Filing and Reporting Requirements on Local Exchange Carriers*. In its Report, the LB & FC had five primary recommendations. Overall, the LB & FC Report recommended that the Commission begin the process of eliminating regulations requiring reports to reduce the regulatory requirements currently existing for LECs in Pennsylvania. The LB & FC recommended that this process be performed in several ways including updating the Commission's current computer capability, consolidating similar information in various reports, and eliminating regulations requiring reports that have been temporarily waived, suspended or otherwise no longer required.

In addition, the LB & FC identified and analyzed a total of 30 reports, filings and other documents. They are as follows: Annual Financial Report, Annual Report of Certificated Interexchange Transporter (IXCs), Annual Report of Residential Account Information, Financial Earnings Report, Annual Depreciation Report, Universal Service Fund Contributions, Assessment Report, Annual Tracking of Telecommunications Relay Service Surcharges, Annual Access Line Report, Lifeline Tracking Report, State Tax Adjustment Surcharge, Physical and Cyber Security Planning Self Certification, State Certification of Universal Service Support, Chapter 30 Annual Price Stability Mechanism, Annual Assessment Bill, Interest Rate on Deposits, Monthly Universal Service Fund Carrier Worksheet, Quarterly Slamming Report, Quarterly Cramming Report, Accident Reports, Standard Service Surveillance Level Report, Traffic Usage Studies, Service Outages, Service Life Study Report, Capital Investment Plan Report, Service Records, Affiliated Interest Agreements, Network Modernization Plans, Supplemental Assessment, and Collocation Report.

### 2. Act 183

After the LB & FC Report was issued, the Legislature enacted Act 183 with an effective date of December 1, 2004. The Act substantially amends the Public Utility Code relating to alternative forms of regulation for LECs and, in particular, contains provisions designed to reduce the present level of annual, quarterly and other periodic reporting requirements for LECs, as well as the attendant time and expense of their preparation.

Act 183 or Chapter 30 provides that the general filing and reporting requirements for LECs are limited to the nine reports specified in the statute, and are to be "submitted in the form determined by the Commission." 66 Pa.C.S. § 3015(e). Section 3015(e) provides that the Commission's filing and audit requirements for a LEC that is operating under an amended network modernization plan are limited to the following: (1) Network modernization reports filed pursuant to Section 3014(f); (2) An annual financial report consisting of a balance sheet and income statement; (3) An annual deaf, speech-impaired and hearing-impaired relay information report; (4) An annual service report; (5) Universal service reports; (6) An annual access line report; (7) An annual statement of gross intrastate operating revenues for purposes of calculating assessments for regulatory expenses; (8) An annual state tax adjustment computation for years in

which a tax change has occurred, if applicable; and (9) for those companies with a bona fide retail request program, a bona fide retail request report under Section 3014(c)(9).

In addition, the Act permits the Commission to require other reports, provided that, after notice and opportunity to be heard, the Commission first finds that the additional report is necessary to ensure compliance with the Act and that the benefits of the report will substantially outweigh the costs to prepare it. 66 Pa.C.S. § 3015(f)(1). Finally, the Act allows that these provisions shall not be construed to limit the Commission's ability to seek further information "to support the accuracy of or to seek an explanation of the reports specified in subsection (e)." 66 Pa.C.S. § 3015(f)(2). Further, Section 3019 retains certain powers for the Commission to review and revise its quality of service standards and establish customer protection requirements.<sup>2</sup>

### 3. Commission's Tentative Order

On April 15, 2005, the Commission entered a Tentative Implementation Order directing the continuation, consolidation, and/or elimination of the general filing and reporting requirements presently imposed on LECs operating in Pennsylvania. In that Order, the Commission provided for further comments on the impact of Act 183 and the LB & FC's findings as they pertained to certain reporting requirements. The Commission directed that a facilitated discussion<sup>3</sup> be held to receive additional comments on the annual financial report, the quarterly slamming reports, the Lifeline Tracking report, and the accident and service outage reports. In addition, the Commission requested written comments by May 31, 2005 on its tentative determinations concerning the LECs' current filing and reporting requirements.

Preliminarily, the Commission concluded that eight reports should be waived and subsequently eliminated, for telecommunications carriers only, either through the rulemaking process or the rescission of previous orders. The reports are as follows: Financial Earnings Report, Annual Depreciation Report, Interest on Deposits Report, Service Life Study Report, Capital Investment Plan Report, Quarterly Cramming Reports, Quarterly Slamming Report for long distance slamming, and Collocation Reports.

Also, the Commission tentatively concluded that certain reports should remain in place in accordance with Act 183. The reports are as follows: the Network Modernization Implementation Plan, the Annual Financial Report, the Annual Tracking Report of Telecommunications Relay Service Surcharges, the Residential Account Information, the Universal Service Fund Contributions and Universal Service Monthly Remittance Worksheet, the Annual Access Line Report, the Assessment Report, Annual Assessment Bill and Supplemental Assessment Bill, the State Tax Adjustment Surcharge (STAS) Report, the Chapter 30 Annual Price Stability Mechanism Report, and Affiliated Interest Agreements.<sup>4</sup>

In addition, the Commission tentatively determined that two additional reports, the Traffic Usage Studies<sup>5</sup> and the State Certification of USF Support of Eligible

<sup>2</sup> 66 Pa.C.S. §§ 3019(b)(2) and (3).

<sup>3</sup> The Commission's facilitated discussion took place on May 11, 2005 where participants submitted unsworn comments that were transcribed.

<sup>4</sup> The Affiliated Interest Agreements are to be filed only for notice, and not for approval purposes.

<sup>5</sup> This report is required by 52 Pa. Code § 63.72 but is being reviewed by the Commission in a rulemaking proceeding at Docket No. M-00031703.

Telecommunications Carriers per 47 C.F.R. § 54.314,<sup>6</sup> should be waived. Further, the Commission determined that certain other reports should remain in place subject to the outcome of certain ongoing proceedings. The reports to remain in place are the Annual Report of Certified Interexchange Transporter,<sup>7</sup> the Physical Cyber Security Planning Self Certification,<sup>8</sup> the Standard Service Surveillance Level Report, per occurrence, and the Service Records, per occurrence, as required by our regulations.

Finally, the Commission, in its Tentative Order, directed that all LECs continue to file their biennial NMP update reports in the form and detail required by the Commission as of July 1, 2004.

### Analysis of LB & FC's Overall Recommendations

As stated previously, the LB & FC had five primary recommendations. The Commission addressed the LB & FC's overall recommendations in its April 15, 2005 Tentative Order.<sup>9</sup> However, the Commission's recently-approved budget impacts one of the central components of the LB & FC Report that suggests the Commission update its information systems to assist in streamlining and consolidating reporting requirements. The Commission's budget for the Fiscal Year 2005-06 provides funds to develop a new Case Management System that would provide a single entry-point to submit and access information, initiate transactions and conduct business. Information related to the Commission's progress in developing this system can be accessed at our website at <http://www.puc.state.pa.us/>. Otherwise, the Commission's previous disposition of the LB & FC's five primary recommendations as stated in its April 15, 2005 Tentative Order remains the same.

### Analysis of Specific Reporting Requirements

Section 3015(e) of Chapter 30 provides direction to the Commission to determine what reporting requirements remain for LECs operating in Pennsylvania. Also, the LB & FC Report provides a number of recommendations that will assist the Commission in further assessing the current requirements, consolidating the collection of information, where appropriate, and eliminating duplicate reporting and obsolete regulations. In addition, the Commission's December 2004 Order and its subsequent Tentative Order have initiated the matter before us so that we can better implement the numerous provisions of Act 183.

At the same time, the Commission notes that the process of determining what reporting requirements remain for LECs operating in Pennsylvania is not an on-the-record proceeding invoking the statutory provision of ex parte communications<sup>10</sup> and the delineation of administrative advisory and prosecutory functions.<sup>11</sup>

<sup>6</sup> This report is presently suspended pursuant to *Petition of the Pennsylvania Independent Telco Coalition for Designation as Eligible Telecommunications Carriers for both State and Federal Purposes*, Docket No. P-00971264 (Order entered June 11, 2004).

<sup>7</sup> This reporting requirement is addressed in *Proposed Rulemaking for Revision of Chapter 63 of Title 52 of the Pennsylvania Code Pertaining to Regulation of Interexchange Telecommunications Carriers and Services*, Docket No. L-00050170 (Order entered March 29, 2005).

<sup>8</sup> This reporting requirement has been required pursuant to *Revised Final Rulemaking Order Re: Public Utility Security Planning and Readiness*, Docket No. L-00040166 (Order entered March 10, 2005), 35 Pa. B. 3299 (June 11, 2005).

<sup>9</sup> See *PUC Filing and Reporting Requirements on Local Exchange Carriers*, Docket No. M-00041857 (Order entered April 15, 2005) at 4-6.

<sup>10</sup> 66 Pa.C.S. § 334(c). As defined in section 334(c), a contested on-the-record proceeding is a proceeding required by a statute, constitution, published commission rule or regulation or order in a particular case, to be decided on the basis of the record of a commission hearing, and in which a protest or petition or notice to intervene in opposition to requested commission action has been filed.

<sup>11</sup> Further, we note that the LEC reporting requirements matter at the above-referenced docket number is not a proceeding to determine a possible violation of the Commission's rules and regulations. Rather, the LEC reporting requirements matter was initiated by the Commission to examine its own regulations and prior orders, in light of the LB & FC's report and the passage of Act 183, to determine whether certain

Rather, the Commission requested comments<sup>12</sup> in this docket to assist us in our implementation of Act 183's provisions concerning the LECs future reporting requirements. If any subsequent enforcement action is filed, such action would be prosecutory in nature and, accordingly, would be subject to ex parte prohibitions and the separation of advisory and prosecutory staff.

Therefore, in this Order, the Commission will address our recommendations originally determined in the Tentative Order. The Commission will discuss each report identified in the LB & FC's Report and determine the proper disposition of the reporting requirement in light of the enactment of Act 183 and the comments submitted in this matter.

### 1. Annual Financial Report

In its Tentative Order, the Commission examined the annual financial report required by our regulations at Section 63.36.<sup>13</sup> The Commission concluded that the annual financial report should be examined at a facilitated discussion to determine the nature and extent of the balance sheet, income statement and supporting documentation required to meet the mandates of Act 183. In addition, the Commission tentatively concluded that the annual financial report continues to be permitted by Act 183 although section 3015(e) limits the scope of the annual financial report to a balance sheet and income statement. At the same time, Section 3015(f)(2) permits the Commission to require submission of further information to support the accuracy of the reports, including the annual financial report, specified in Section 3015(e).

The LB & FC's Report stated that the annual financial report is an essential report by which the Commission monitors the financial and operational performance of LECs so that the telecommunications utilities are able to provide adequate and reliable service to the public. The LB & FC points out that, in 2001, the reporting requirements for all telecommunications carriers were appreciably abridged including a Commission restructuring of the annual financial reports.<sup>14</sup> The annual financial report is to be filed by all jurisdictional utilities by either April 30 or July 31 reflecting the previous reporting year.<sup>15</sup>

In comments submitted on May 3, 2005 in anticipation of the facilitated discussion, the interested participants<sup>16</sup> discussed the Commission's Tentative Order as well as the provisions of Chapter 30 concerning the LECs reporting requirements. The Commission's Bureau of Fixed Utility Services submitted comments on May 3, 2005, as well as a final form annual financial report revised in accordance with Act 183. FUS' proposed final form consists of 11 pages—eight pages requiring balance sheet and income statement data and three pages consisting of

reporting requirements should be consolidated or streamlined. Thus, the Commission concludes that this docket is not a matter invoking the separation of prosecutory and advisory functions.

<sup>12</sup> Concurrently, on April 15, 2005, the Commission issued a Secretarial Letter setting the date for the facilitated discussion as well as the procedures for participating in the discussion. The Commission provided for comments and/or presentations to be filed at the docket in anticipation of the May 11, 2005 facilitated discussion. The interested participants were able to submit comments approximately seven days before the facilitated discussion was convened. In addition, the interested participants were provided an opportunity to make presentations at the facilitated discussion as well as to file written comments by May 31, 2005.

<sup>13</sup> 52 Pa. Code § 63.36. Historically, the annual financial report has been a comprehensive report with multiple schedules and supporting documentation.

<sup>14</sup> The Commission restructured the annual financial reports by industry segment and reduced the number of pages in half. The carriers continue to be required to provide up to 39 schedules of financial information. LB & FC Report at 4.

<sup>15</sup> The Commission determined that the April 30 due date for the annual financial report for LECs be suspended as set forth in its March 11, 2005 Secretarial Letter in this docket.

<sup>16</sup> Comments or letters of participation were filed by the Pennsylvania Telephone Association (PTA), MCI, Representatives William F. Adolph, Jr., Raymond Bunt, Jr., Joseph Preston, Jr., Fran B. Cleaver, Esquire for Senator Robert M. Tomlinson, Office of Consumer Advocate (OCA), the Commission's Bureaus of Consumer Services and Fixed Utility Services.

instructions, applicable notes to the balance sheet and income statement, and the verification statement.<sup>17</sup>

FUS has revised the Commission's annual financial report to specific-purpose financial statements as necessary for regulatory oversight in accordance with several provisions of Act 183.<sup>18</sup> For example, the proposed balance sheet information concerning assets and debts provides important data with respect to receivables from or investments in affiliates. Also, FUS submits that the Telephone Plant in Service category and related accumulated depreciation information on the balance statement is necessary to monitor the LECs investment in doing business in Pennsylvania including the financial relationships between regulated entities and affiliates.<sup>19</sup> In the liabilities and other credits category of the balance sheet, FUS recommends retaining information with respect to accounts payable to affiliates and long term debt so that the financial viability of the LECs can be assessed.<sup>20</sup> Further, FUS recommends the retention of detailed information of state and local taxes since this information is used by the Commission to verify the state tax adjustment surcharge calculations as well as by other state and federal agencies for budgeting, regulatory and taxation policy purposes.<sup>21</sup>

Regarding the proposed annual financial report income statement, FUS has modified the income statement to reflect data associated with monitoring annual intrastate revenues of rural telecommunications carriers including different categories of services (competitive, noncompetitive, and protected services) to comply with sections 3015(b)(1) and (2).<sup>22</sup> In addition, FUS proposes that the income statement include minimum summary data needed to monitor expenditures to determine whether they are adequate and necessary to ensure safe and reliable service.<sup>23</sup> Finally, FUS requests that the Commission approve the annual financial report as presented in its Attachment 4 for use for the 2004 reporting year.

On the other hand, the PTA, in its May 3, 2005 comments, indicates that the LB & FC Report is superseded by the passage of Act 183 and, thus, the annual financial report is limited to one balance sheet and income statement.<sup>24</sup> In defining these terms, the PTA relies on a series of sources but essentially submits that the balance sheet and income statement required under Act 183 should consist of summary schedules providing financial information on assets, liabilities and equity as well as comprehensive income.<sup>25</sup> Specifically, the PTA states that the balance sheet and income statement that is contained in the Commission's current annual financial report at schedules 8 and 10 should be the only information required to comply with Act 183.<sup>26</sup> The PTA also submits that other types of reports, such as statements of retained earnings, changes in equity, financial position or cash flow are expressly excluded by the statute.<sup>27</sup>

Further, the PTA states that the annual financial report is not subject to the language at sections 3015(e)(9) and 3015(f)(2) of Chapter 30 which permits the Commission to determine the form of reports and to require information to support the accuracy or to seek an expla-

nation of the reports listed in subsection(e).<sup>28</sup> The PTA states that section 3015(e)(9) applies only to the Bona Fide Retail Request Program report which is the ninth report in this section.<sup>29</sup>

At the May 11, 2005 facilitated discussion, the interested participants further commented on the contents of the annual financial report. Specifically, FUS discussed Attachment 4 as its proposed format for the annual financial report in light of the passage of Act 183. FUS indicates that Attachment 4 is a balance sheet and income statement with explanatory notes comprising eleven pages.<sup>30</sup> FUS also indicates that, in general, the annual financial report is a principle tool for all parts of the Commission to inform themselves of a company's level of operations.<sup>31</sup>

Specifically, FUS submits that the proposed format provides a base for year-to-year comparisons, financial monitoring and consistent information for evaluating proposed changes by the LECs. For example, FUS indicates that the proposed annual financial report will provide information on the proposed migration of services from protected to competitive designation and a company's proposed elimination of the state universal service fund.<sup>32</sup> Also, FUS indicates that the proposed annual financial report can provide an intermediate check on the general level of investment that is being made by a particular LEC for NMP compliance. Further, the proposed annual financial report will provide limited information on dollar flows between affiliates so that regulated companies are not improperly subsidizing an affiliate, such that the LEC could not meet its Act 183 obligations.<sup>33</sup>

In addition, legislative staff indicated that the annual financial report is limited to simply a balance sheet and income statement.<sup>34</sup> Similar comments were submitted by Representatives William Adolph, Jr.,<sup>35</sup> Raymond Bunt, Jr. and Joseph Preston, Jr.<sup>36</sup> In addition, other participants including the PTA<sup>37</sup> and the OCA<sup>38</sup> commented on the format of the annual financial report.

Moreover, written comments<sup>39</sup> were filed on May 31, 2005 further clarifying the annual financial report. Based upon the comments received at the facilitated discussion and a subsequent informal meeting with the interested participants, FUS submitted comments reflecting further revisions to the annual financial report. FUS makes these modifications in compliance with sections 3015(e) and (f)(2) of Chapter 30 so that the Commission develops a

<sup>28</sup> 66 P.C.S. at §§ 3015(e) and (f).

<sup>29</sup> PTA May 3, 2005 Comments at 4-5.

<sup>30</sup> Tr. at 39. FUS indicates that Attachment 4 represents a redesign of schedules to try and better reflect post Act 183 operating conditions.

<sup>31</sup> Id.

<sup>32</sup> Tr. at 39-40.

<sup>33</sup> Tr. at 40.

<sup>34</sup> Comments of Fran Cleaver, Esquire for Senator Tomlinson's Office, Tr. at 15-16.

<sup>35</sup> Representative Adolph submitted comments stating: "House Bill 30 . . . limits the Annual Report to a balance sheet and income statement. . . . these two are intentionally referenced and no others are permitted." Comments of Representative William F. Adolph, Jr., 165th Legislative District, Tr. at 19-20.

<sup>36</sup> Representatives Bunt and Preston submitted the following comments: "[T]he Commission may ask for nine reports enumerated above and may request additional clarifying information on the nine reports where necessary. No further reports or additional information can be requested or mandated unless the aforementioned findings are made." Comments of Representatives Raymond Bunt, Jr., Majority Caucus Secretary and Joseph Preston, Jr., Democrat Chairman Consumer Affairs Committee, Tr. at 23.

<sup>37</sup> Comments of Karen Dillon, Commonwealth Telephone Company, Tr. at 29-32. Ms. Dillon identified several items in FUS Attachment 4 that she believed did not fall into the category of income statement or balance sheet. Also, Ms. Dillon asked for clarification of particular categories included in FUS Attachment 4 to indicate that PTA wishes to limit its reporting to a balance sheet and income statement. Tr. at 32.

<sup>38</sup> Comments of Phillip McClelland, Esquire, Office of Consumer Advocate, Tr. at 37. Mr. McClelland stated that OCA supports FUS Attachment 4 as proposed with some clarifications. Also, Mr. McClelland stated that the OCA's goal is "to get an accurate jurisdictional picture of the company, both their assets and income available, so that we could evaluate their financial health." Id.

<sup>39</sup> The PTA, OCA, MCI and FUS filed written comments on May 31, 2005.

<sup>17</sup> FUS May 3, 2005 Comment of Robert F. Wilson at 4.

<sup>18</sup> Id. at 4-8.

<sup>19</sup> Id. at 7-8.

<sup>20</sup> Id. at 8.

<sup>21</sup> Id. at 9.

<sup>22</sup> Id.

<sup>23</sup> Id. at 10.

<sup>24</sup> PTA May 3, 2005 Comments at 4-6.

<sup>25</sup> Id. at 10-11.

<sup>26</sup> Id. at 12.

<sup>27</sup> Id. at 11.



format that includes the requisite information along with supporting documentation to permit the Commission to effectively perform its statutory obligations prescribed by Act 183.<sup>40</sup> Specifically, FUS revised the annual financial report to incorporate line items in compliance with the Uniform System of Accounts for Telecommunications Companies at the federal level.<sup>41</sup> However, FUS submits that companies must continue to maintain subaccounts for residential and business revenues as well as revenues and expenses for the different classifications of telecommunications services.

In addition, FUS states that it has designed the annual financial form to be applicable to both incumbent and competitive LECs and to require little follow up under section 3015(f)(2) for companies that use the form. FUS indicates that, if PTA's proposed two schedules are filed, the LECs would be subject to subsequent Commission data requests to validate the financial information so that the Commission can meet its statutory obligations.<sup>42</sup>

The PTA also submitted comments on May 31, 2005 in accordance with the Commission's Tentative Order. Although PTA objects to using the unsworn statements obtained at the facilitated discussion to support Commission findings in this docket, the PTA states its willingness to cooperate with FUS to develop an annual financial report that meets the requirements of the statute and is useful to the Commission at the same time. In that light, PTA submits that modifying Schedules 8 and 10 of the current annual financial report is acceptable as long as the modifications follow the prescribed Chart of Accounts and do not include new accounting categories such as residential and business revenues, noncompetitive and competitive services revenues, or intrastate operating revenues.<sup>43</sup> However, PTA states that it can endorse the current breakdown of revenues listed in the Chart of Accounts which include local network, local access, network access, long distance, miscellaneous and uncollectibles.<sup>44</sup>

In terms of the balance sheet items, the PTA is willing to accept FUS' modification of including plant-in-service accounts in accordance with the Chart of Accounts categories even though this level of detail is not typically included in a balance sheet.<sup>45</sup> On the other hand, PTA objects to including additional information in the balance sheet as proposed by FUS including identification of investments with affiliates and long-term debt information. Because of these changes, PTA submits revised income statement and balance sheet documents to reflect its modifications.<sup>46</sup>

MCI briefly addresses the issue that the annual financial report should be limited to a balance sheet and income statement. In supporting PTA's comments, MCI concurs with Ms. Dillon's comments set forth at the May 11, 2005 facilitated discussion.<sup>47</sup>

Subsequent to the close of the comment period in this docket, the interested participants continued to informally discuss the annual financial report. On August 9, 2005, the PTA and FUS submitted a written stipulation in this docket that represents an agreed-to form for the annual financial report. In addition, Appendix A indicates

that the new annual financial form will be used by all LECs, incumbents as well as competitive LECs, to file their 2004 data by October 31, 2005. Specifically, Appendix A of the stipulation, as attached hereto, indicates that the Commission will be able to sufficiently monitor the changes in company accounts from year to year, particularly those related to affiliated transactions and plant investment made for local exchange services so that the Commission can fulfill its financial oversight and statutory obligations. The stipulation permits the summary level of reporting for many accounts because the smaller companies report at summary levels of accounting in accordance with FCC directives. Even though the larger telecom companies maintain separate, detailed accounts and subaccounts for local exchange and toll services and separate subsidiary operations, the Commission recognizes that that additional information is made available at the FCC for the large ILECs which negates requiring more detailed filings at the Commission. The stipulation also provides for companies to reference their explanatory notes to balance sheets and income statements as reported to stockholders. Further, the stipulation provides for a verification by a company officer which provides assurance of the validity of the submitted information.

Based on our review of the requirements of Act 183 and the proposal submitted by FUS and PTA, the Commission hereby determines that the annual financial report for incumbent and competitive LECs should consist of the information submitted by FUS and the PTA in their August 9, 2005 stipulation at Appendix A. We agree that this version of the annual financial report meets that Commission's informational needs and is consistent with the Annual Financial Report specified in Act 183. The proposed format also avoids duplication of information available to the Commission elsewhere, and is substantially streamlined from the pre-Act 183 annual report. Also, the agreed-to report format permits the Commission to undertake a meaningful review of a company's financial circumstances to fulfill our statutory duty of requiring reasonable, safe and reliable telecommunications service.

Therefore, because the proposed Annual Report is consistent with Act 183 and meets the Commission's informational needs, the Commission hereby modifies the form of the Annual Financial Report to that proposed by FUS and PTA in Appendix A of their joint stipulation. Nevertheless, the legislature has recognized that an individual company's annual financial report or circumstances may raise questions that require further review to adequately fulfill the Commission's statutory responsibilities. In that event, Act 183 provides that the Commission may require the submission of further information "to support the accuracy of or to seek an explanation of" the annual financial report. 66 Pa.C.S. § 3015(f)(2).

## 2. Annual Report of Certified Interexchange Transporter

In its Tentative Order, the Commission found that the annual report of certified interexchange transporters should remain as a reporting requirement in accordance with our regulations at section 63.107 and Act 183. The Commission also found that the statute does not limit the Commission's authority to order the filing of certain reports including those that may be necessary to monitor the market for and competitiveness of IXC services even though section 3018 provides that all interexchange services are competitive.<sup>48</sup>

<sup>40</sup> May 31, 2005 Comments of Robert A. Rosenthal, Director, Bureau of Fixed Utility Services, at 1-2.

<sup>41</sup> 47 C.F.R. § 32 (Uniform System of Accounts for Telecommunications Companies (hereinafter referred to as Chart of Accounts)).

<sup>42</sup> *Id.* at 2-3.

<sup>43</sup> PTA May 31, 2005 Comments at 7-9.

<sup>44</sup> *Id.* at 8.

<sup>45</sup> *Id.* at 9.

<sup>46</sup> *Id.* and PTA June 1, 2005 Attachment.

<sup>47</sup> MCI May 31, 2005 Comments at 3.

<sup>48</sup> 66 Pa.C.S. § 3018(d)(2).

The annual report of certified interexchange transporters (IXCs), i.e. long distance carriers, is required by Commission regulation at section 63.107.<sup>49</sup> According to the Commission's regulation, the report is due annually on May 31 reflecting total revenue and traffic volume data measured in minutes of use for intrastate operations for the preceding calendar year. The LB & FC's Report states that the Commission requires this IXC report to monitor the operating revenues of the IXC industry to determine its viability. The PTA's position in the LB & FC's Report was to eliminate this reporting requirement and to require that the IXCs file the same information in their annual financial reports.

MCI filed comments supporting elimination of this reporting requirement because the interexchange (IXC) market has been competitive for a significant number of years in both Pennsylvania and nationally.<sup>50</sup> MCI submits that additional competition has entered the IXC market since the passage of the Telecommunications Act of 1996 and Verizon's entry into the IXC market in Pennsylvania in September 2001. MCI submits that, based on these factors, there is no need for the Commission to monitor the viability or the competitiveness of the IXC market. Therefore, MCI states that this reporting requirement should be eliminated.<sup>51</sup>

No other comments were filed addressing this reporting requirement. At this time, the Commission is examining its obligations to regulate IXC carriers in a proposed rulemaking at Docket No. L-00050170.<sup>52</sup> Once comments are received in that docket, the Commission will make its final determinations concerning the regulation of IXC carriers and their services. In the meantime, however, the Commission adopts its findings as set forth in the Tentative Order and the annual report of certified interexchange transporter at section 63.107 remains in place subject to the outcome of the above-mentioned rulemaking proceeding.

### 3. Annual LEC Reporting of Residential Account Information

In its Tentative Order, the Commission determined that, in accordance with Act 183, the information currently required at sections 64.201(a) and (b) is to be filed on an annual basis as part of the annual service report listed in section 3015(e)(4) of the Act. The Commission based its tentative conclusion on section 3019(b)(2) of Chapter 30 which retains the Commission's authority to review and revise its regulations concerning the ordering, installation, suspension and termination of any telecommunication service. Also, the Commission determined that our regulations at section 64.201(b) which require quarterly filings be waived to reduce the filing to an annual basis to comply with Chapter 30. Thus, we directed Commission staff to begin a rulemaking to eliminate the quarterly filings of the information required at sections 64.201(b) if no adverse comments were received.

The Commission's regulations at sections 64.201(a) and (b)<sup>53</sup> require LECs to file residential account information reflecting billing and collection practices including cus-

tomers' disputes. Section 64.201(a) requires LECs that have less than 50,000 residential accounts to file an annual report by April 1 containing information about their residential accounts as prescribed by section 64.201(c)<sup>54</sup> of the regulation. Section 64.201(b) requires that LECs with more than 50,000 residential accounts file quarterly and annual reports containing information about their residential accounts as prescribed by section 64.201(c) of the regulation.<sup>55</sup>

Comments were received concerning this reporting requirement. PTA concurs with the Commission's tentative conclusion that the residential account information described herein should be included in the annual service report at section 3015(e)(4) but limited to annual reports for all LECs.<sup>56</sup>

On the other hand, MCI submits that the national competitive LECs, such as itself, do not maintain the information in the present format and request that the Commission modify the regulation to permit company-specific filings.<sup>57</sup> Also, MCI states that this report is not necessary for the Commission to monitor trends in customer services and telecommunications competition. MCI submits that telecommunications competition can be analyzed through other means including access line reports and revenues that are provided through other reporting requirements. Although MCI does not believe that the information contained in this report is related to customer service, MCI opines that customer service trends can be monitored through informal complaints received by BCS.<sup>58</sup>

In addition, MCI comments that the information contained in this report is not necessary to protect consumers, especially in light of the changed telecommunications market in Pennsylvania. MCI submits that the telecommunications market is no longer a monopoly and customers have choices in their providers and services.<sup>59</sup> MCI believes that this reporting requirement should be eliminated since it is not listed in section 3015(e).

Further, MCI states that this reporting requirement is problematic because the report requires basic, non-basic and toll information which is an outdated format since many providers offer bundled services that do not recognize a distinction between local and toll charges. In addition, carriers such as MCI do not separate uncollectible amounts according to different types of services.<sup>60</sup> Therefore, MCI supports elimination of this reporting requirement but, in the alternative, requests the Commission to modify the regulation to permit carriers to report according to the manner in which the information is collected by companies.<sup>61</sup>

In reviewing the comments submitted by MCI and the provisions of Chapter 30, the Commission determines

<sup>49</sup> 52 Pa. Code § 64.201(c) requires that LECs include information regarding the average number of residential accounts per month, the average monthly residential customer bill, the average number of overdue residential accounts per month, the average overdue residential customer bill per month, the average number of residential basic service suspension notices and suspensions per month, LECs' gross revenues from residential accounts, LECs' gross and net write-offs of uncollectible residential accounts, and the total number of Chapter 64 disputes.

<sup>50</sup> The LB & FC Report states that the Commission uses these reports to monitor all LECs billing and collection practices and billing dispute volumes to determine trends in customer service including problem areas and corrective actions. The Commission also states, in the LB & FC Report, that this information is used for operational audits and measuring residential telecommunications competition. LB & FC Report at 7.

<sup>51</sup> PTA May 3, 2005 Comments at 6.

<sup>52</sup> MCI May 31, 2005 Comments at 4.

<sup>53</sup> Id. at 4-5.

<sup>54</sup> Id. at 5.

<sup>55</sup> Id. at 6. MCI indicates that it has requested a waiver of the Commission's regulations at section 64.201(c)(4) since it does not track overdue account information on a state-specific basis. The Commission granted the waivers pertaining to section 64.201(c) as requested by MCI. *Petitions of MCI/Metro Access Transmission Services, LLC for Waiver of Local Exchange Reporting Requirements at 52 Pa. Code 64.201*, Docket No. P-00042139 (Order entered September 9, 2005).

<sup>56</sup> MCI May 31, 2005 Comments at 6-7.

<sup>49</sup> 52 Pa. Code § 63.107(In practice, the IXC transporters submit their annual filing on April 30). On March 23, 2005, the Commission adopted a proposed rulemaking to revise our regulations regarding interexchange telecommunications carriers (IXCs) as a result of Act 183. *Proposed Rulemaking for Revision of Chapter 63 of Title 52 of the Pennsylvania Code Pertaining to Regulation of Interexchange Telecommunications Carrier and Service*, Docket No. L-00050170 (Order entered March 29, 2005).

<sup>50</sup> MCI May 31, 2005 Comments at 4-4.

<sup>51</sup> MCI May 31, 2005 Comments at 4.

<sup>52</sup> *Proposed Rulemaking for Revision of Chapter 63 of Title 52 of the Pennsylvania Code Pertaining to Regulation of Interexchange Telecommunications Carrier and Service*, Docket No. L-00050170 (Order entered March 29, 2005).

<sup>53</sup> 52 Pa. Code §§ 64.201(a) and (b).

that both incumbent and competitive LECs will continue to provide information in accordance with our current regulations at section 64.201 but on an annual basis. We find that company-specific information regarding residential account information is not practical and, in fact, may violate the provisions of Act 183. If the Commission would allow company-specific information to be filed concerning residential account information from numerous companies, Commission staff would find it necessary to request additional clarifying information from each carrier resulting in increased reporting information and responsibilities rather than decreased reporting requirements as prescribed in Chapter 30. Also, the Commission finds that the use of standardized data permits the Commission to compare companies on service quality issues over time as permitted by section 3019 of Chapter 30 so that it can review and revise its regulations to address and update service quality standards.

Therefore, we conclude that the determinations reached in our Tentative Order are affirmed and direct Commission staff to begin a rulemaking to change the quarterly filings requirement at sections 64.201(b) to annual reporting consistent with the provisions of Chapter 30 and the discussion in this Order.

#### 4. Financial (Earnings) Report

In the Tentative Order, the Commission decided to continue to waive the financial earnings report as required in our regulations at section 71.3<sup>62</sup> as set forth in the March 11, 2005 Secretarial Letter at this docket. At the same time, the Commission directed staff to immediately initiate a rulemaking proceeding to eliminate this regulation, for telecommunications carriers only, in accordance with the discussion in the Tentative Order. Further, in accordance with Section 703(g) of Title 66,<sup>63</sup> the Commission concluded that it would rescind its December 4, 2001 Order that streamlined the reporting requirements for financial earnings information filed by LECs, subject to consideration of any comments to the contrary.

The financial earnings report is required from those companies with annual intrastate gross revenue in excess of \$1 million but less than \$10 million on an annual basis. The companies with annual intrastate gross revenue in excess of \$10 million must file semiannually. In 2001, the Commission streamlined the reporting requirements for the financial earnings information by reducing the filing intervals as described above.<sup>64</sup>

The PTA submits general comments in this docket indicating that, if specific reports do not appear in section 3015(e)(1)—(9), the Commission cannot require them under Act 183. Also, the PTA opines that the Commission cannot reinstate any reports not related to rates unless it uses the process outlined in section 3015(f) of Chapter 30.<sup>65</sup> The PTA also submitted, at the time of the LB & FC Report, that the reports under section 71.03 should be eliminated if the ILEC has an approved alternative form of regulation. Beyond the PTA comments, no participant filed comments on this reporting requirement after the Commission entered its Tentative Order.

The Commission affirms its conclusion reached in the Tentative Order that the list of reports permitted by Act 183 does not include a separate financial earnings report

of the type required by section 71.3 of our regulations. Therefore, we shall rely on the income statement data in the annual financial report permitted by Section 3015(e)(1) to monitor the earnings and financial health of LECs. Consequently, we direct staff to immediately initiate a rulemaking proceeding to eliminate this regulation, for telecommunications carriers only, in accordance with the discussions in our Tentative and Final Orders at this docket. Further, in accordance with Section 703(g) of Title 66,<sup>66</sup> the Commission rescinds its December 4, 2001 Order that streamlined the financial earnings reporting requirement for LECs pursuant to our discussion set forth herein.

#### 5. Annual Depreciation Report

The Commission also determined, in its Tentative Order, that the annual depreciation report required at section 73.3<sup>67</sup> of our regulations is waived and subject to elimination through the rulemaking process. The Commission determined that sections 3014(f)(1) and 3015(e)(1) permit the filing of depreciation reports in the form specified by sections 73.3—73.4 with NMP biennial reports. At the same time, we directed staff to determine whether a streamlined form of the information specified in sections 73.3—73.4 can be adequate to verify LEC compliance with its NMP obligations.

As stated in the Tentative Order, this reporting requirement applies to all telecommunications carriers with over 50,000 access lines and all public utilities that have annual gross intrastate operating revenues in excess of \$20 million. Currently, eight telecommunications companies<sup>68</sup> are required to file this annual report. The Commission, in the LB & FC Report, indicated that the purpose of this LEC filing is to provide detailed annual depreciation expense for each company for the annual financial report and the biennial network modernization plan (NMP) report. In essence, this report, in conjunction with the service life study report and the capital investment plan report, assists the Commission in monitoring on a regular basis the depreciation practice and capital planning of a public utility.<sup>69</sup>

No comments were filed concerning this reporting requirement at this docket except for the PTA's general comments concerning the specific reports listed in section 3015(e) and the process described in section 3015(f) as mentioned above. The PTA, at the time of the LB & FC Report, proposed to eliminate this reporting requirement because the annual depreciation information is similar information provided in a company's annual financial report.<sup>70</sup> In addition, the PTA noted that LECs governed by Chapter 30 plans are required to provide information on depreciation as part of their biennial NMP reports.

As directed by the Commission in the Tentative Order, Commission staff has examined the current depreciation information received in compliance with our regulations. In doing so, Commission staff has included in the agreed-to annual financial report the necessary annual depreciation data needed to verify the LECs NMP obligations. In addition, depreciation information is submitted in a LEC's NMP biennial report in accordance with section 3014(f)(1). Because these two reports will furnish

<sup>62</sup> 66 Pa.C.S. § 703(g).

<sup>67</sup> 52 Pa. Code § 73.3.

<sup>68</sup> Alltel, Commonwealth Telephone Company, Conestoga Telephone Company, D & E Telephone Company, North Pittsburgh Telephone Company, United Telephone Company, Verizon North Inc. and Verizon Pennsylvania Inc. LB & FC Report at 11. Concerning these eight LECs, the annual depreciation report is reviewed in conjunction with the company's NMP report to determine each LEC's progress towards meeting its modernization objectives.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 12.

<sup>62</sup> Section 71.3 requires that LECs with annual intrastate gross revenue in excess of \$1 million file financial earnings reports. 52 Pa. Code § 71.3.

<sup>63</sup> 66 Pa.C.S. § 703(g).

<sup>64</sup> *Adequacy and Interpretation of Existing Accounting Procedures and Financial Reporting Regulations for All Telecommunications Carriers*, Docket No. L-00010153 (Order entered December 4, 2001).

<sup>65</sup> PTA May 31, 2005 Comments at 7.

the appropriate annual depreciation information needed to verify the LECs NMP obligations, the annual depreciation information is streamlined so that the annual depreciation report required by our regulations can be eliminated.

In addition, based upon our review of Chapter 30, the list of reports permitted by Act 183 does not include a separate annual depreciation report of the type required by section 73.3 of our regulations. As noted by the PTA, depreciation information is submitted as part of the annual financial report and, in our judgment, will remain a critical component to support the accuracy of the LECs' income statements. Therefore, as we determined in our Tentative Order, this filing requirement is waived as it pertains to general filing and reporting obligations, and staff will immediately commence a rulemaking proceeding to eliminate the regulation.

At the same time, we note that sections 3014(f)(1) and 3015(e)(1) continue to require the filing of biennial reports in the detail and form required by the Commission as of July 1, 2004,<sup>71</sup> unless the Commission reduces such reporting requirements. The Commission's reporting requirements for biennial updates currently include a requirement to file depreciation reports in the form specified by sections 73.3—73.4. Therefore, each LEC remains obligated to file this information with its NMP biennial report consistent with sections 3014(f)(1) and 3015(e)(1).

## 6. Universal Service Fund Reports

In the Tentative Order, the Commission examined the universal service fund contributions report as well as the USF remittance worksheet and concluded that these reports can continue to be required under Chapter 30 at section 3015(e)(5).<sup>72</sup> Moreover, the Commission determined that these reports are necessary to manage Pennsylvania's universal service fund.

The LB & FC Report examined our regulations at section 63.165<sup>73</sup> which requires an annual submission by all telecommunications carriers of their total intrastate end-user telecommunications retail revenues for the preceding calendar year. This information is necessary to calculate the amount each carrier will owe the Pennsylvania Universal Service Fund the next calendar year.<sup>74</sup>

Also, the LB & FC Report reviewed the monthly universal service fund carrier remittance worksheet as required by our regulations at section 63.169.<sup>75</sup> This worksheet is filed with a LEC's monthly USF contribution. Currently, the Commission has opened an investigation into the intrastate access charges of the rural ILEC carriers (including Sprint/United) to determine whether the Pennsylvania USF should continue after December 31, 2006.<sup>76</sup> The Commission's decision in that proceeding will impact this reporting requirement.

The PTA indicated in the LB & FC Report as well as its comments<sup>77</sup> at this docket that no changes should be made to these reporting requirements. The OCA concurs with the Commission's language in its Tentative Order that we are required by federal regulations to certify to

the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) that carriers in Pennsylvania will use federal high cost support monies received only for the provision, maintenance, and upgrading of the facilities and services eligible for support. The OCA submits that this certification requirement applies to high cost support and any type of federal universal service support received.<sup>78</sup>

In considering the comments received and in accordance with Chapter 30, the Commission affirms its determinations in the Tentative Order at this time. Therefore, we find that section 3015(e)(5) permits the continuation of the universal service fund contributions report and the remittance worksheet in one report as prescribed in our regulation at section 63.165. However, we may revisit this issue once a final determination has been made concerning Pennsylvania's universal service fund at Docket No. I-00040105 as discussed herein.

## 7. Assessment Reports

In its Tentative Order, we determined that the Commission is statutorily required to notify all public utilities of the amount of their assessment.<sup>79</sup> Because of this statutory requirement,<sup>80</sup> we determined that the Commission is obligated to render an annual assessment bill based on all public utilities' gross intrastate revenues. Thus, we found that no changes were needed regarding the Commission's annual assessment report and bill.<sup>81</sup>

As required by section 510(b) of the Public Utility Code,<sup>82</sup> the assessment report provides gross intrastate operating revenues for the preceding year for all public utilities, including telecommunications carriers, so that each company is assessed its appropriate share for that year. The information contained in a company's statement is vitally necessary to calculate the annual assessment amounts for each public utility to fund the continued operation of the Commission, Office of Consumer Advocate, and Office of the Small Business Advocate.<sup>83</sup>

The PTA states that the assessment report and subsequent bill should remain in its current form and is permitted under section 3015(e)(7) of Chapter 30.<sup>84</sup> Also, the PTA indicated in the LB & FC Report that no changes are necessary in the annual assessment bill.<sup>85</sup> No other comments were filed addressing this reporting requirement.

We agree with the PTA that sections 510(b) and 3015(e)(7) of the Public Utility Code requires LECs to file an annual statement of gross intrastate revenues for assessment purposes. Therefore, we affirm our decision in the Tentative Order to continue the assessment report and bill in accordance with sections 510(b) and 3015(e)(7).

## 8. Annual Tracking Report of TRS Surcharges

In the Tentative Order, the Commission found that the LECs are to file the annual tracking report of TRS surcharges in accordance with our regulations,<sup>86</sup> previous orders and Act 183 at section 3015(e)(3). Specifically, the Commission concluded that Act 183 at section 3015(e)(3) requires LECs to provide an annual deaf, speech-impaired

<sup>71</sup> *Implementation of Chapter 30 of the Public Utility Code: Reporting Requirements for Biennial Updates of Network Modernization Plans Filed Pursuant to 66 Pa.C.S. § 3003(b)(6)*, Docket No. M-00930441 (Order entered May 17, 1999).

<sup>72</sup> Act 183 at § 3015(e)(5).

<sup>73</sup> 52 Pa. Code § 63.165.

<sup>74</sup> LB & FC Report at 13.

<sup>75</sup> 52 Pa. Code § 63.169.

<sup>76</sup> *Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pa. Universal Service Fund*, Docket No. I-00040105 (Order entered December 20, 2004). On August 30, 2005, the Commission entered an Order staying this proceeding for one year in light of the Federal Communications Commission's ongoing proceedings concerning intercarrier compensation.

<sup>77</sup> PTA May 3, 2005 Comments at 6; PTA May 31, 2005 Comments at 5-6.

<sup>78</sup> OCA May 3, 2005 Comments at 5.

<sup>79</sup> 66 Pa.C.S. § 510(c).

<sup>80</sup> As stated previously, Act 183 did not repeal Section 510 of the Public Utility Code, thus, the Commission's statutory obligations at this section remain in effect.

<sup>81</sup> As stated in our Tentative Order, we note that the filing referenced here is not a report but the actual bill and/or supplemental bill sent to all public utilities so they can remit payment of their assessment.

<sup>82</sup> 66 Pa.C.S. § 510(b).

<sup>83</sup> LB & FC Report at 14.

<sup>84</sup> PTA May 3, 2005 Comments at 6-7.

<sup>85</sup> LB & FC Report at 22.

<sup>86</sup> 52 Pa. Code § 69.513.

and hearing-impaired relay information report which includes the annual tracking report mentioned herein.

As stated in the LB & FC Report, the Commission uses the annual tracking report of TRS surcharges as required by section 69.513 of our regulations to monitor carrier surcharge submittals to the TRS Fund in comparison to the carrier's access line counts to verify that the appropriate surcharge is collected from end users. In addition, the Commission also uses this information to perform its annual audit of the TRS Fund.<sup>87</sup>

The PTA advocates that this tracking report is permissible under section 3015(e)(3) as part of the annual deaf, speech-impaired and hearing-impaired relay information report.<sup>88</sup> No other participant commented on this reporting requirement.

Based on our review of section 69.513, our Order<sup>89</sup> and Act 183, we find that the telecommunications carriers are required to file the annual tracking report of TRS surcharges with the Commission in accordance with our regulation at section 69.513(a) and Chapter 30. Therefore, we affirm our determinations in the Tentative Order as discussed herein and the reporting requirement prescribed at section 69.513(a) remains in place.

### 9. Annual Access Line Report

In our Tentative Order, we determined that telecommunications carriers should continue to file the annual access line report with the Commission in accordance with our regulation at section 69.513(b) and Act 183. The Commission reached this conclusion because Act 183 at section 3015(e)(6) clearly requires LECs to provide an annual access line report.<sup>90</sup>

As indicated in the LB & FC Report, the Commission requires the annual access line report in order to recalculate the TRS surcharges each year.<sup>91</sup> In addition, the report is used as a measure of market competition in the state, by comparing the access line counts for CLECs and ILECs.<sup>92</sup>

The PTA indicates that the annual access line report is permissible under section 3015(e)(6).<sup>93</sup> No other participant commented on this reporting requirement.

Therefore, we affirm our determination in our Tentative Order that the LECs will continue to submit their annual access line report as required by section 69.513(b) of our regulations and our previous Orders in accordance with Chapter 30 at section 3015(e)(6).

### 10. Lifeline Tracking Report

In the Tentative Order, we determined that comments should be received concerning the Lifeline tracking report so that we could further assess the necessity of this filing requirement. We indicated in the Tentative Order that, once the parties' comments are reviewed by the Commission, we will make a final determination as to the necessity of the Lifeline tracking report.

In the LB & FC Report, the Commission indicated that the Lifeline tracking report is required by our February

21, 2003 Order<sup>94</sup> on an annual basis in order to monitor customer enrollment and funding levels in the statewide Lifeline 150, and Link-Up programs, the Verizon<sup>95</sup> companies' Lifeline programs and Verizon Pennsylvania Inc.'s Universal Telephone Assistance Program (UTAP). Also, the Commission stated that it uses the data to monitor the status of other LECs' universal service programs.<sup>96</sup>

BCS filed comments on this reporting requirement indicating that it monitors the universal service programs of LECs by using the data collected from the annual Lifeline tracking report. BCS indicates that the reporting on universal service programs consists primarily of enrollment data on the following programs: Link-Up America, Lifeline Service, and the Universal Telephone Assistance.<sup>97</sup> BCS also indicates that the Commission directed that industry and other interested participants develop new formats for reporting the requested data but no consensus was reached by the parties. Therefore, BCS developed and the Commission approved Verizon's annual Lifeline tracking report to monitor the customer enrollment and funding levels for the universal service programs offered by Verizon Pennsylvania and Verizon North. BCS also uses this same data to provide an annual report to the Commission, the General Assembly and the public on the status of telephone universal service programs in Pennsylvania. BCS further indicates that it uses the annual Lifeline tracking reports supplied by the non-Verizon companies to monitor customer enrollment and the status of universal programs offered by other major carriers operating in Pennsylvania.<sup>98</sup>

In addition, BCS indicates that the annual Lifeline tracking report is permitted as a reporting requirement at section 3015(e)(5) of Chapter 30.<sup>99</sup> In light of the changes in Chapter 30 requiring automatic notification of Lifeline programs at section 3019(f), BCS recommends that the annual report remain in place so that program changes resulting from Act 183 can be tracked to measure the impact of the newly-enacted provisions.<sup>100</sup>

As stated previously, the PTA submits comments at this docket indicating that, if specific reports do not appear in section 3015(e)(1)–(9), the Commission cannot require them under Act 183. Also, the PTA opines that the Commission cannot reinstate any reports not related to rates unless it uses the process outlined in section 3019(f) of Chapter 30.<sup>101</sup> Specifically, PTA indicates that the Commission can no longer require the Lifeline tracking report because it does not relate to rates or rate setting as set forth in section 3015(f)(1) of Chapter 30.<sup>102</sup> The PTA also submits that this report cannot be required under section 3015(e)(5) as a universal service report simply because other participants state that it is related to the policy goal of universal service.<sup>103</sup> The PTA argues that the term "universal service reports" at section 3015(e)(5) includes only two separate reports related to the administration of the universal service fund.<sup>104</sup> Con-

<sup>94</sup> *Joint Petition of Nextlink PA, Inc., Senator Vincent J. Fumo, Senator Roger Madigan, Senator Mary Jo White, et al. for Adoption of Partial Settlement Resolving Telecommunications Issues*, Docket Nos. P-00991648 and P-00991649 (Order entered February 21, 2003).

<sup>95</sup> Verizon North Inc. and Verizon Pennsylvania Inc.  
<sup>96</sup> The LECs affected are Alltel, Comcast, Commonwealth Telephone Company, MCI Inc., and United Telephone Company.

<sup>97</sup> BCS May 3, 2005 Comments at 2-3.

<sup>98</sup> BCS May 3, 2005 Comments at 5.

<sup>99</sup> *Id.* at 6.

<sup>100</sup> *Id.*

<sup>101</sup> PTA May 31, 2005 Comments at 7.

<sup>102</sup> PTA May 3, 2005 Comments at 12-13.

<sup>103</sup> PTA May 31, 2005 Comments at 5-6.

<sup>104</sup> *Id.*

<sup>87</sup> LB & FC Report at 15.

<sup>88</sup> PTA May 3, 2005 Comments at 6.

<sup>89</sup> *PA Telecommunications Relay System and Annual Tracking Report of PA Telecommunications Relay Service Surcharges*, Docket No. M-00900239 (Orders entered August 3, 1990 and September 11, 1992).

<sup>90</sup> 66 Pa.C.S. § 3015(e)(6).

<sup>91</sup> *Id.* and 52 Pa. Code § 69.153.

<sup>92</sup> LB & FC Report at 16.

<sup>93</sup> PTA May 3, 2005 Comments at 6.

currently, the PTA stated that no changes to these reporting requirements were needed at the time of the LB & FC Report.<sup>105</sup>

The OCA submits that the continuation of the annual Lifeline tracking reports is critical to assessing the success of Pennsylvania's telephone low-income assistance programs. The OCA states that, in order to measure the specific Lifeline provisions designed to enhance enrollment as set forth at section 3019(f) of Chapter 30, the tracking reports are necessary to monitor customer participation.<sup>106</sup> The OCA further submits that the continued reporting of Lifeline tracking data is necessary for the Commission, the OCA and other interested parties to monitor the effectiveness of the statutory changes to Lifeline terms, eligibility, and outreach.<sup>107</sup>

In addition, the OCA submits that the annual Lifeline tracking reports are permitted under section 3015(e)(5) of Chapter 30 in that this report is a universal service report derived from the Commission's 1997 *Universal Service Order*.<sup>108</sup> The OCA points out that the Commission has identified Lifeline as a universal service program since 1997 and categorizing the Lifeline tracking reports as other than universal service reports contradicts established practice and usage.<sup>109</sup> Also, the OCA states that the Commission should construe the annual Lifeline tracking reports as permitted under section 3015(e)(5) as universal service reports because OCA opines that the declarations of policy, definitions and Lifeline provisions of Act 183 work together regarding universal service objectives.<sup>110</sup> Further, the OCA submits that the annual Lifeline tracking reports be continued so that the Commission can assess its newly-imposed requirements<sup>111</sup> and the legislative changes mandated by Act 183.<sup>112</sup>

The OCA further argues that the Commission can require the annual Lifeline tracking reports requirement pursuant to its section 3015(f) authority. In doing so, the OCA submits that the Commission satisfies the requirements of 3015(f) in that Lifeline service is defined as a discounted rate local service offering.<sup>113</sup> The OCA also submits that the Commission is authorized to enforce and monitor rates for Lifeline service to determine whether qualified customers are being charged the appropriate rate for discounted Lifeline service. Further, the OCA points out that the annual Lifeline tracking reports take minimum preparation time on the part of the LECs as stated in the LB & FC Report which satisfies section 3015(f)(2) requirements.<sup>114</sup>

In the Commission's judgment, both the record in this proceeding and the Lifeline statutory provision in Chapter 30 have highlighted the importance of the Lifeline program.<sup>115</sup> As explained by the OCA, the Lifeline tracking report data is essential for the regulatory process, in order to gauge past successes and determine the need for changes going forward.<sup>116</sup> Also, BCS notes that this report is the only report available for tracking and

monitoring telephone universal service programs in Pennsylvania.<sup>117</sup> Six new sections of Chapter 30 address Lifeline service to ensure broader customer notice about the program. Since the Lifeline tracking report is the only currently provided report that allows the Commission to monitor Lifeline programs in Pennsylvania and Chapter 30 seeks to broaden Lifeline enrollment, it appears that the benefits of this report may outweigh the attendant costs.

Accordingly, we find that the Lifeline tracking report is not within the scope of reports listed in section 3015(e) but, at the same time, we shall refer to another proceeding the issue of whether the Lifeline tracking report meets the exception standard in section 3015(f)(1) that would nevertheless allow the Commission to require this report on a permanent basis.<sup>118</sup> In the interim, to protect against a gap in our ability to fulfill our statutory duty to monitor Lifeline programs, we shall require LECs to continue the Lifeline tracking report pending the outcome of the 3015(f) proceeding.

### 11. State Tax Adjustment Surcharge (STAS)

In the Tentative Order, we found that the LECs are required to submit their tariff filings reflecting any changes in state taxes in accordance with our regulations at Sections 69.52—56 and Act 183 at Section 3015(e)(8). Specifically, we concluded that Chapter 30 at section 3015(e)(8) permits an annual state tax adjustment surcharge report, if applicable.

In the LB & FC Report,<sup>119</sup> the Commission states that this is a tariff filing on an annual basis or on a per occurrence basis that allows public utilities to adjust its STAS in response to fluctuations in certain taxes for cost recovery of state tax changes. This tariff filing requirement permits all utilities, including LECs, to recover portions of the Capital Stock Tax, Corporate Net Income Tax, Gross Receipts Tax, and Public Utility Realty Tax through a surcharge on rates charged to customers.

The PTA submitted comments indicating that the STAS report should continue in its current form in accordance with our regulations.<sup>120</sup> PTA also recommended no changes to this filing requirement at the time of the LB & FC Report.

Therefore, we affirm our determination in our Tentative Order that the LECs will continue to submit the annual state tax adjustment surcharge report as required by section 69.52—56 of our regulations and in accordance with Chapter 30 at section 3015(e)(8).

### 12. Physical and Cyber Security Planning Self-Certification

In the Tentative Order, the Commission remained committed to its proposed final rulemaking<sup>121</sup> regarding the LECs' self-certification of physical and cyber security planning because we found that the public benefit of this cyber security certification outweighs the cost of submitting the one-page form. The Commission also concluded that this cyber security regulation relates directly to the type of service quality standard permitted by Section

<sup>105</sup> LB & FC Report at 17.

<sup>106</sup> OCA May 3, 2005 Comments at 2.

<sup>107</sup> Id. at 4.

<sup>108</sup> Id. at 2-3 and OCA June 2, 2005 Comments at 2-3. *Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth*, Docket No. 1-00940035 (Order on Reconsideration entered July 31, 1997).

<sup>109</sup> OCA June 2, 2005 Comments at 4-5.

<sup>110</sup> Id. at 5-6.

<sup>111</sup> *Lifeline and Link-Up*, Docket No. M-00051871 (Order entered May 23, 2005). The Commission is requiring that companies verify customers' continuing eligibility in Lifeline/Link-Up programs on an annual basis using the FCC's regulations as a guideline for reporting this information.

<sup>112</sup> OCA June 2, 2005 Comments at 9.

<sup>113</sup> 66 Pa.C.S. § 3012 (emphasis added). OCA June 2, 2005 Comments at 9-10.

<sup>114</sup> OCA June 2, 2005 Comments at 11 and LB & FC Report at 17.

<sup>115</sup> 66 Pa.C.S. § 3019(f).

<sup>116</sup> OCA May 3, 2005 Comments at 4.

<sup>117</sup> BCS May 3, 2005 Comments at 6.

<sup>118</sup> *Section 3015(f) Review Regarding the Lifeline Tracking Report, Accident Report and Service Outage Report*, Docket No. M-00051900 (Order adopted September 9, 2005).

<sup>119</sup> LB & FC Report at 18.

<sup>120</sup> PTA May 3, 2005 Comments at 7.

<sup>121</sup> *Physical and Cybersecurity Program Self Certification Requirements for Public Utilities*, Docket No. M-00031717 (Order entered December 9, 2003) and *Public Utility Security Planning and Readiness*, Docket No. L-00040166 (Order entered October 5, 2004). On March 3, 2005, the Commission approved a revised final rulemaking concerning public utility security planning and readiness. See *Revised Final Rulemaking Order Re: Public Utility Security Planning and Readiness*, Docket No. L-00040166 (Order entered March 10, 2005), 35 Pa.B. 3299 (June 11, 2005).

3019(b)(2). After the Tentative Order, the Commission's proposed final regulation became effective on June 11, 2005. Therefore, this reporting requirement is presently required by the LECs.

As stated in the LB & FC Report, this reporting requirement applies to all utilities, including LECs, to provide information concerning the development and maintenance of security and emergency response plans. The Commission is requesting that all utilities certify on an annual basis that the companies have developed and maintained written physical, cyber security, emergency response, and business continuity plans to protect the Commonwealth's infrastructure and maintain safe, continuous and reliable utility service.<sup>122</sup>

At the time the Commission was finalizing this regulation, PTA informed the Commission that it does not oppose the Commission's proposed final rulemaking regarding the LECs' self-certification of physical and cyber security planning.<sup>123</sup> No other comments were received concerning this reporting requirement. Therefore, this reporting requirement remains in place as required in June 2005.

### 13. State Certification of Universal Service Support

The Commission, in its Tentative Order, continued to suspend the state certification of universal service support reporting requirement under the conditions articulated in the Commission's June 11, 2004 Order.<sup>124</sup> As noted in our Tentative Order, this reporting requirement was suspended by the Commission unless certain conditions occurred concerning the membership of the Pennsylvania Independent Telecommunications Coalition (Coalition), the disaggregated study areas of the PTA members, or in the E-911 status of the counties in which the PTA members serve.<sup>125</sup> Also, we concluded, based upon our review of the provisions of Act 183, that the Commission is granted independent state authority to require universal service information from Pennsylvania LECs as set forth in section 3015(e)(5).

In the LB & FC Report,<sup>126</sup> the Commission indicated that this requirement is dictated by federal regulation which requires state commissions to certify to the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) that rural telecommunications carriers in Pennsylvania will use any federal high cost support received only for the provision, maintenance, and upgrading of the facilities and services eligible for support.<sup>127</sup> In order to meet this federal mandate, the Commission requires rural telecommunications carriers to submit affidavits and supporting data certifying that high cost support monies are being spent as intended by the Telecommunications Act of 1996. The PTA's position, at the time of the LB & FC Report, was to eliminate the certification as a routine annual report.

The OCA filed comments addressing this reporting requirement. The OCA indicated that it is concerned that the Commission no longer gathers data to make certain that federal universal service funds are properly used.<sup>128</sup>

<sup>122</sup> LB & FC Report at 19. The Commission has committed to treating the information on a confidential basis.

<sup>123</sup> PTA Letter to Commission Secretary McNulty dated February 11, 2005.

<sup>124</sup> *Petition of the Pennsylvania Independent Telco Coalition for Designation as Eligible Telecommunications Carriers for both State and Federal Purposes*, Docket No. P-00971264 (Order entered June 11, 2004).

<sup>125</sup> If there is any significant change in these areas, the Commission noted that the PTA is required to notify the Commission of the change within 30 days of its occurrence.

<sup>126</sup> LB & FC Report at 20.

<sup>127</sup> 47 C.F.R. § 54.314.

<sup>128</sup> OCA May 3, 2005 Comments at 5.

The OCA submits that its concern is amplified by the recent FCC decision to expand reporting requirements for ETCs so that they use high-cost universal service support for its intended purposes.<sup>129</sup> The OCA points out that the FCC will apply its expanded reporting requirements to Pennsylvania ETCs that are not jurisdictional to the PUC. The OCA submits that the PUC should apply these same reporting requirements for jurisdictional ETCs.<sup>130</sup>

Based upon our review of Act 183 and federal regulations, we are unable to eliminate this reporting requirement since it is subject to federal regulation. Therefore, we affirm our decision in the Tentative Order and continue to suspend this reporting requirement under the conditions articulated by the Commission's June 11, 2004 Order.

### 14. Annual Price Stability Mechanism

In its Tentative Order, the Commission determined that Act 183 allows LECs to file amended NMPs that include updated network modernization plans and changes to their productivity offset.<sup>131</sup> In making that determination, we concluded that the LECs need to submit revenue and inflation information of the type specified in this report to support any rate changes that may be permitted by a LEC's alternative form of regulation. Therefore, in order for the Commission to review and allow implementation of any subsequent rate changes to protected service, we found that the annual price stability mechanism report is required by and necessary to the Commission's duties and powers under Act 183.

In addition, the Commission found that the information contained in this report is necessary in order to properly assess LECs their correct share of contributions to the various broadband funds established in the statute.<sup>132</sup> Further, we concluded that the information is needed to calculate any potential refunds if a particular LEC has not met its NMP commitments.<sup>133</sup>

The LB & FC Report noted that the Commission requires the LECs with alternative forms of regulation to file annually the allowable changes in revenues from non-competitive telecommunications services. This filing is required by previous Commission Orders approving individual company Chapter 30 plans and the Commission's January 2004 Policy Statement.<sup>134</sup> The purpose is to calculate the LECs' change in revenues as permitted by its alternative form of regulation and to reflect those changes in accompanying tariff supplements in accordance with each company's Chapter 30 plan.<sup>135</sup> The PTA recommended that no changes should be made to this reporting requirement at the time of the LB & FC Report.<sup>136</sup>

No comments were received addressing this reporting requirement. Upon review of this matter, we believe that this filing requirement should be continued for the following reasons as articulated in our Tentative Order. Thus, the Commission affirms its determination in the Tentative Order and requires the annual price stability mechanism report to be filed so that the Commission can fulfill its statutory duties and powers under Act 183.

<sup>129</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (Order released March 17, 2005).

<sup>130</sup> OCA May 3, 2005 Comments at 6. The OCA also submits similar comments during the May 11, 2005 Facilitated Discussion. Tr. 35-36.

<sup>131</sup> 66 Pa.C.S. at §§ 3014 and 3015.

<sup>132</sup> Id. at § 3015.

<sup>133</sup> Id. at § 3015(a)(2).

<sup>134</sup> *Sunset of Chapter 30, Title 66 of the Public Utility Code*, Docket No. M-00041786 (Order adopted January 16, 2004).

<sup>135</sup> LB & FC Report at 21.

<sup>136</sup> Id.

### 15. Interest Rate on Deposits

In the Tentative Order, the Commission found that the interest rate on deposits report<sup>137</sup> is no longer needed as a separate filing with the Commission. Therefore, we concluded that this reporting requirement should be eliminated for telecommunications carriers only through a rulemaking proceeding.

In the LB & FC Report, the Commission stated that the purpose of the report is to compare customer deposits taken for the current year with that of prior years. PTA indicated in the LB & FC Report that information on customer deposits is filed at Schedule 25 of the annual financial report.<sup>138</sup> PTA's position was that this reporting requirement is no longer needed.

No comments were submitted addressing this reporting requirement. In reviewing Act 183 and our regulations, we affirm our decision in the Tentative Order that this reporting requirement is no longer needed as a separate filing with the Commission. Therefore, we conclude that staff shall immediately initiate a rulemaking proceeding to eliminate the interest rate on deposit requirements as required by our regulation at 52 Pa. Code § 64.41 for telecommunications carriers only. Since no comments were received, we rescind our Order at Docket No. P-00981357 in accordance with section 703(g) of the Public Utility Code.<sup>139</sup>

### 16. Quarterly Slamming Reports

In its Tentative Order, the Commission determined that LECs are no longer required to file long distance slamming reports. Since the FCC is responsible for administering and enforcing its slamming liability rules at 47 C.F.R. §§ 64.1140—1180 for interexchange carriers, the Commission found that there is no public need to require reporting in this area.

However, the Commission determined, in the Tentative Order, that information documenting the occurrence of local slamming<sup>140</sup> remains vital to monitoring the quality of local telephone service, particularly the quality of customer service and consumer protection. The Commission concluded that section 3015 (e)(4) allows the Commission to require information regarding customer service to be filed in an annual service report so that the Commission can fulfill its statutory duties of service quality and consumer protection.

The filing of quarterly slamming reports with the Commission is required by our regulation at 52 Pa. Code § 64.23(b)(7) and Commission Order.<sup>141</sup> Waivers of this requirement have been granted to ILECs having fewer than 50,000 access lines.<sup>142</sup> All ILECs regardless of access line counts must retain records of customer allegations of slamming for three years.<sup>143</sup> In the LB & FC Report, the Commission indicated that the purpose of this report is to provide the Commission with data to monitor local and long distance slamming complaints received by ILECs with 50,000 or more residential accounts and CLECs.<sup>144</sup>

Companies maintain records and submit a quarterly report of all customer complaints made about slamming.<sup>145</sup>

Several comments were filed concerning this reporting requirement. BCS indicates that the Commission should continue to require all LECs with more than 50,000 access lines to file a report that addresses local slamming only.<sup>146</sup> BCS recommends that the report be limited to an annual filing containing the following three items: the name of the company that slammed the LEC's customer, the slamming company's CIAC code, and the number of local slamming complaints the LEC has received.<sup>147</sup>

The PTA submits that legislative references to particular reports are properly interpreted as references to the reports that existed at the time that Act 183 was passed. The PTA specifically indicates that the use of the singular in the phrase "annual service report" means that it cannot be reasonably expanded to incorporate other reports that are not listed such as slamming and cramming.<sup>148</sup> Also, the PTA interprets the statute to limit the language in section 3015(e)(9) to apply only to the bona fide retail request report and not to any other report in the list at section 3015(e).<sup>149</sup> The PTA argues that the fact that the Commission's authority to determine the form of a report is limited to the bona fide retail request report highlights the strict limits intended by the General Assembly concerning the LECs reporting requirements. Further, the PTA submits that the quarterly slamming reports for local slamming do not relate to rates or rate setting and, therefore, the Commission can not require this report in accordance with section 3015(f)(1).<sup>150</sup>

MCI agrees with PTA that the General Assembly recognized the elimination of the reporting requirements which includes the quarterly slamming report as an unnecessary report.<sup>151</sup> MCI submits that both the long distance and local slamming reports should be eliminated because it requires one LEC to report the alleged misbehavior of another LEC.<sup>152</sup> MCI believes this requirement forces LECs to determine whether a slamming allegation is valid and this situation is problematic in a competitive environment.<sup>153</sup>

The OCA does not object to eliminating long distance slamming reports as recommended in the Commission's Tentative Order.<sup>154</sup> However, the OCA requests that the Commission indicate in its final order that long distance slamming continues to be a violation of section 1501 of the Public Utility Code and may be enforced by the Commission in a future case.<sup>155</sup>

In reviewing the comments submitted in this docket and the provisions of Act 183, the Commission affirms its determination that LECs are no longer required to report long distance slamming. As stated previously, since the Federal Communications Commission (FCC) is responsible for administering and enforcing its slamming liability rules at 47 C.F.R. §§ 64.1140—1180 for interexchange

<sup>137</sup> 52 Pa. Code § 64.41. *Petition of the Pennsylvania Telephone Association for Waiver of the Pennsylvania Public Utility Commission's Regulation at 52 Pa. Code § 64.41*, Docket No. P-00981327 (Order entered November 5, 1998).

<sup>138</sup> LB & FC Report at 23.

<sup>139</sup> 66 Pa.C.S. § 703(g).

<sup>140</sup> Slamming is an unauthorized change to the customer's long distance carrier. 52 Pa. Code § 64.23 (b).

<sup>141</sup> *Proposed Rulemaking and Final Interim Guidelines for Standardizing Local Exchange Company Responses to Customer Contacts Alleging Unauthorized Changes to Customers' Telecommunications Service Providers and Unauthorized Charges to Customers' Bills*, Docket Nos. L-00990140 and M-00981063 (Order entered January 14, 1999).

<sup>142</sup> *Petition of Pa. Telephone Association for Waiver of Requirements at 52 Pa. Code § 64.23(a) (6) and (b)(7)*, Docket No. P-00032050 (Order entered September 18, 2003).

<sup>143</sup> The 3-year record keeping requirement appears at 52 Pa. Code § 64.23(b)(7).

<sup>144</sup> LB & FC Report at 25.

<sup>145</sup> Also, BCS compares this information with the number of informal complaints filed to determine whether the LECs are handling these complaints according to the Commission's regulations at Section 63.23(b). Additionally, the Office of Trial Staff may use this information to prosecute a LEC for non-compliance. This information may also be used by the Commission's Office of Communications to support its consumer education efforts.

<sup>146</sup> BCS May 3, 2005 Comments at 2.

<sup>147</sup> Id.

<sup>148</sup> PTA May 3, 2005 Comments at 4 and PTA May 31, 2005 Comments at 6.

<sup>149</sup> Id. at 4-5. Section 3015(e)(9) includes the following language: "[t]hese reports shall be submitted in the form determined by the commission."

<sup>150</sup> Id. at 12-13.

<sup>151</sup> MCI May 3, 2005 Comments at 2. Tr. at 36.

<sup>152</sup> MCI May 31, 2005 Comments at 7.

<sup>153</sup> Id.

<sup>154</sup> OCA May 3, 2005 Comments at 6.

<sup>155</sup> Id. at 7. Tr. at 36. The PTA agrees with the OCA's statement that long distance slamming continues to be a violation of the Public Utility Code.



carriers, there is no public need for the Commission to require reporting in this area.

Also, we agree with the participants that urged the Commission to eliminate the local slamming report. Although the Commission clearly retains the authority at section 3019(b)(2) to address service standards and consumer protection, we find that the local slamming report should be eliminated. However, we determine that incidents of local slamming should be maintained by the LECs for a minimum of three years as required by our regulations at section 64.23(b)(7). In addition, in the event that the Commission requests slamming information, we find that the LECs continue to be required to furnish such information to the Commission upon request in accordance with section 505 of Title 66. Further, we determine that the Commission maintains the ability to inspect the records of utilities as deemed necessary in accordance with section 506 of Title 66. In consideration of our authority to gain information regarding local slamming when necessary, we determine that the LECs no longer are required to file local slamming reports.

Therefore, the Commission will immediately initiate a rulemaking to revise its regulations to eliminate long distance and local slamming complaints as required by our regulations at section 64.23(b)(7). As set forth in the Tentative Order, the waiver of the quarterly report filing will remain in effect until such time as regulations revised in accordance with this discussion receive final regulatory approval.<sup>156</sup>

### 17. Quarterly Cramming Reports

In the Tentative Order, we concluded that the quarterly cramming reports should be discontinued because the Commission does not have jurisdiction over the entities that are primarily responsible for cramming.<sup>157</sup> Therefore, in our Tentative Order, we directed staff to immediately initiate a rulemaking to revise section 64.23(a)(6) to eliminate this reporting requirement. In addition, the Commission waived the filing of cramming reports until such time as our revised regulations receive final regulatory approval.

In the LB & FC Report, the Commission stated that our regulations at section 64.23(a)(6)<sup>158</sup> required cramming reports to be filed on a quarterly basis by LECs.<sup>159</sup> All LECs regardless of access line counts must retain records of customer complaints alleging cramming for three years. The purpose of these quarterly reports is to provide the Commission with data to monitor cramming complaints received by ILECs with 50,000 or more residential accounts and CLECs.<sup>160</sup>

The PTA and OCA filed comments concerning this reporting requirement. Although the PTA states that OCA's comments fall outside of the scope of this proceeding, the PTA concurs with the OCA that the Commission continues to regulate LEC and IXC cramming with the caveat that the Commission's jurisdiction is limited to

intrastate cramming charges on LEC bills.<sup>161</sup> Also, the PTA, at the time of the LB & FC Report, opposed this requirement as it does not believe that its members should be burdened with reporting IXC misbehavior. The PTA argued that there are other means by which the Commission can obtain this information to monitor the frequency in which these incidents occur in order to identify trends involving specific IXCs.<sup>162</sup>

The OCA does not object to the elimination of the cramming report but submits that the Commission retains jurisdiction over IXC and non-IXC carriers' billing actions concerning cramming.<sup>163</sup> The OCA clarifies that the Commission's regulations at section 64.23(a) apply to any cramming charges that appear on a LEC bill. Also, the OCA emphasizes that the Commission retains jurisdiction over many of the bills provided to Pennsylvania customers on which cramming charges from IXCs or non-IXC carriers may appear. The OCA relies on sections 3018(b)(3) and 3019(b)(2) to reach its conclusion that the Commission retains jurisdiction over LEC and IXC cramming and may continue to eliminate these charges from a LEC's bill.<sup>164</sup>

Upon further review of Act 183, we agree with the OCA that the Commission retains jurisdiction over cramming charges that appear on LEC bills by IXC or non-IXC carriers. Chapter 30 at section 3018(b) clearly retains the Commission's authority to regulate the ordering, installation, restoration and disconnection of interexchange service to customers. In addition, section 3018(d) also provides authority to the Commission to resolve complaints regarding the quality of IXC service.<sup>165</sup> Further, we agree with the PTA and the OCA that the Commission retains additional authority under section 3019(b)(2) of Chapter 30 to review and revise quality of service standards addressing the ordering, installation, suspension, termination and restoration of any telecommunications service.<sup>166</sup>

However, upon our review of Act 183, we continue to believe that we do not retain jurisdiction over many of the entities that may cram charges on LECs bills to customers. Because of this determination, we conclude that the quarterly cramming reporting requirement can be eliminated consistent with the discussion in our Tentative Order.

### 18. Accident Reports and Service Outage Reports

In the Tentative Order, the Commission determined that the accident and service outage reporting requirements should receive additional comment to determine their necessity. At the same time, we found that these reporting requirements are not listed among the annual and other periodic reporting requirements listed in Section 3015(e). However, based on the provisions at sections 3019(b)(2) and (b)(3), we determined that Act 183 retains the Commission's authority to review and establish requirements relative to service quality for the safety and reliability of telecommunications services and consumer protection.<sup>167</sup> In addition, the Commission concluded that we are granted the authority in Section 1501 of the Title 66<sup>168</sup> to ensure that every public utility furnishes and maintains adequate, efficient, safe and reasonable service and facilities.

<sup>156</sup> Note that the 3-year maintenance requirement for all records of customer allegations of slamming in section 64.23(b)(7) is a record keeping requirement and not a reporting requirement and as such, remains in effect for all LECs pending further regulatory action.

<sup>157</sup> Cramming is unauthorized charges added to the customer's bill. 52 Pa. Code § 64.23(a). The three year record keeping requirement at 52 Pa. Code § 64.23(a)(6) is a record keeping requirement and not a reporting requirement and as such, remains in effect for all LECs pending further regulatory action.

<sup>158</sup> 52 Pa. Code § 64.23(a)(6). Waivers of this requirement have been granted to ILECs having fewer than 50,000 access lines.

<sup>159</sup> LB & FC Report at 26.

<sup>160</sup> BCS compares this information with the number of informal complaints to determine whether the LECs are handling these complaints according to the regulations at Section 63.23(a). BCS may forward this information about problem companies to the Attorney General's Office for investigation. BCS also provides this information as needed to the Commission's Communications Office to support its consumer education program.

<sup>161</sup> PTA May 31, 2005 Comments at 6-7.

<sup>162</sup> LB & FC Report at 26-27.

<sup>163</sup> OCA May 3, 2005 Comments at 7-8. Tr. at 36.

<sup>164</sup> Id. at 8-9.

<sup>165</sup> 66 Pa.C.S. § 3018(b) and (d).

<sup>166</sup> 66 Pa.C.S. § 3019(b)(2).

<sup>167</sup> Id.

<sup>168</sup> 66 Pa.C.S. § 1501.

The reports, as required by the Commission's regulations at section 63.11 and section 1508 of Title 66,<sup>169</sup> require all public utilities, including LECs, to file reports following an accident resulting in the death of a person or an occurrence of an unusual nature. The purpose of the report is to have information provided to the Commission so that it can monitor serious accidents involving facilities or operations of all public utilities.<sup>170</sup> At the time of the LB & FC report, the PTA indicated that accident reports are only required on a per incident basis and stated that no changes in this reporting requirement are necessary.<sup>171</sup>

In addition, the Commission's regulations at section 67.1 requires all public utilities, including LECs, to report service outages when 2,500 or 5 percent, whichever is less, of a public utility's customers have an unscheduled service interruption in a single accident for six or more projected consecutive hours.<sup>172</sup> The Commission reviews the service outage reports to ensure that all necessary steps were taken in the utility's restoration efforts and to monitor the level of service outages occurring in the state.<sup>173</sup> The PTA indicated in the LB & FC Report that no changes to this reporting requirement should be made.<sup>174</sup>

Comments were filed in this docket by interested participants concerning accident and service outage reports. FUS explains that the Commission has developed an electronic form to report accidents that are required whenever injury or death occur involving utility property, on a per occurrence basis.<sup>175</sup> FUS indicates that this report is required by statute at section 1508 of Title 66 and, thus, cannot be waived by the Commission. In addition, FUS concludes that the General Assembly has not eliminated accident reports as a reporting requirement because section 1508 of Title 66 has not been superseded by Chapter 30 at 3019(h).<sup>176</sup>

Regarding the service outage reports, FUS indicates that this report is required by section 67.1 of our regulations to implement our statutory duty of ensuring that utility service "shall be reasonably continuous and without unreasonable interruptions or delay" in accordance with section 1501 of Title 66.<sup>177</sup> Again, FUS points out that section 1501 has not been superseded by Chapter 30 at 3019(h). In addition, FUS submits that the service outage reports are required to implement the provisions of section 3019(b)(2) of Chapter 30 since the Commission retains the authority to review and revise standards addressing safety, adequacy, and reliability of service.<sup>178</sup> FUS further explains that the purpose of the service outage reporting requirement is to provide the utility with an opportunity to initially explain the circumstances surrounding an outage of larger magnitude so that the Commission can determine whether the incident warrants enforcement action under section 1501.<sup>179</sup>

The PTA submits that accident reports and service outage reports are no longer required because they are

not specified in section 3015(e) of Chapter 30.<sup>180</sup> In addition, these two reports cannot be requested by the Commission under section 3015(f)(1)(i) because they do not address rates. Further, the PTA submits that the Commission cannot require accident and service outage reports under section 3015(f)(1)(ii) because subpart (i) and (ii) operate together.<sup>181</sup> The PTA thus concludes that the accident reports and service outage reports may not be required by the Commission and must be discontinued.<sup>182</sup>

In addition, the PTA disagrees with FUS' conclusions that certain provisions of Title 66 are not superseded by Act 183. Rather, the PTA submits that Act 183 is clear at section 3019(h) in that the statute supersedes "any conflicting provisions of this title or other laws of this Commonwealth."<sup>183</sup> The PTA concludes that accident and service outage reporting can no longer be maintained because of the above-mentioned provisions of Chapter 30.

The OCA submits that section 1501 of Title 66 permits the Commission to request utilities to provide notice of widespread and prolonged service failures in order that the Commission knows whether a particular utility is providing reasonably continuous service.<sup>184</sup> The OCA submits that elimination of this requirement for service outage reports would present a large danger to public safety which is a result the General Assembly could not have intended. The OCA submits that the Commission can comply with section 3015(f) of Chapter 30 because the threat to public safety that would result from eliminating the service outage reporting requirement clearly outweighs the LECs expense and time to prepare the required information.<sup>185</sup> However, the OCA comments that the Commission is correct in that section 3019(b)(2) provides the Commission authority to seek information necessary to facilitate the review and revision of service standards including those involving safety, adequacy and reliability.<sup>186</sup>

In the Commission's judgment, the information contained in the accident reports and service outage reports, filed on a per incident basis, is important to the Commission's duty to ensure reasonable, adequate and reliable utility service for the benefit of consumers in accordance with section 1501 of Title 66 and our regulations at sections 63.11 and 67.1. The Commission receives this information from every public utility, including telephone companies, and the information is vital in an emergency situation to allow the Commission to respond effectively. Since obtaining timely and current information regarding serious service outages and accidents relates directly to our ability and statutory duty to monitor the quality of service provided by LECs, it appears that the benefits of this report may outweigh the attendant costs.<sup>187</sup>

Accordingly, we find that the accident and service outage reports are not within the scope of reports listed in section 3015(e) but, at the same time, we shall refer to

<sup>180</sup> PTA May 3, 2005 Comments at 12.

<sup>181</sup> 66 Pa.C.S. § 3015(f)(1)(i) and (ii). Notwithstanding any other provision of this title to the contrary, no report, statement, filing or other document or information, except as specified in subsection(e), shall be required of any local exchange telecommunications company unless the commission, upon notice to the affected local exchange telecommunications company and an opportunity to be heard, has first made specific written findings supporting conclusions in an entered order that: (i) The report is necessary to ensure that the local exchange telecommunications company is charging rates that are in compliance with this chapter and its effective alternative form of regulation. (ii) The benefits of the report substantially outweigh the attendant expense and administrative time and effort required of the local exchange company to prepare it.

<sup>182</sup> Id. at 12-13. PTA May 31, 2005 Comments at 3-4.

<sup>183</sup> 66 Pa.C.S. § 3019(h). PTA May 31, 2005 Comments at 3.

<sup>184</sup> OCA May 3, 2005 Comments at 12-13.

<sup>185</sup> Id. at 14.

<sup>186</sup> Id. at 15.

<sup>187</sup> We note here that the per incident accident report is a 1-page form and that the service outage report is a 2-page form, both available on the Commission's website. In years that no accidents or serious service outages occur, no report would be required.

<sup>169</sup> 52 Pa. Code § 63.11 and 66 Pa.C.S. § 1508. Specifically, § 1508 provides that every public utility give immediate notice to the Commission of any accident in or about, or in connection with, the operation of its service and facilities, when a person has been killed or injured.

<sup>170</sup> LB & FC Report at 28.

<sup>171</sup> Id.

<sup>172</sup> 52 Pa. Code § 67.1.

<sup>173</sup> LB & FC Report at 32.

<sup>174</sup> Id.

<sup>175</sup> FUS May 3, 2005 Comments at 1. Tr. at 41.

<sup>176</sup> Id. Section 3019(h) repeals several sections of Chapter 13 of Title 66 but section 1508 is not repealed by Chapter 30. Therefore, FUS states that this incident driven reporting is expected by the Legislature to be continued, otherwise it would have been specifically highlighted as superseded. FUS May 3, 2005 Comments at 1. Tr. at 41.

<sup>177</sup> FUS May 3, 2005 Comments at 1.

<sup>178</sup> Tr. at 41.

<sup>179</sup> Id. at 1-2.

another proceeding the issue of whether these reports, filed on a per incident basis, meet the exception standard in section 3015(f)(1) that would nevertheless allow the Commission to require these reports on a permanent basis.<sup>188</sup> In the interim, to protect against a gap in our ability to fulfill our statutory duty to ensure safe and reliable service to the public, we shall require the LECs to continue to file, on a per incident basis, the accident and service outage reports pending the outcome of the 3015(f) proceeding.

### 19. Service Surveillance Exception Reports

In our Tentative Order, we found that the service quality exception reports are reflective of and are permitted by our statutory obligation to mandate that public utilities provide safe, adequate and reliable public utility service in accordance with Act 183 and sections 308(d), 331(b) and 1501 of Title 66. Nevertheless, the Commission determined that the necessity of this reporting requirement will be further examined in the context of *Petition of the Consumer Advocate for Rulemaking to amend 52 Pa. Code Chapter 63* pending at Docket No. P-00021985.<sup>189</sup>

The Commission's regulations at 52 Pa. Code § 63.55 require ILECs and CLECs to file service surveillance exception reports when the companies' performance fails to meet minimal performance standards set forth in subchapter E (relating to telephone quality service standards).<sup>190</sup> The report is required to be filed only if a company's performance fails to meet minimal standards for three consecutive months<sup>191</sup> and the report apprises the Commission of corrective steps the company will take to remedy the situation.<sup>192</sup> The report allows the Commission to monitor the LECs on-going performance and to take necessary corrective action.<sup>193</sup> Further, we note that the service surveillance exception report is not a recurring report and therefore differs from the type of annual and other periodic reports addressed in section 3015(e).

MCI filed comments recommending that this reporting requirement be eliminated because it is considered an annual service report and it is not necessary in the present competitive telecommunications market place.<sup>194</sup> MCI indicates that Chapters 63 and 64 of the Pennsylvania Code were written to monitor and enforce compliance with service quality levels when customers had no choice in telecommunications providers.<sup>195</sup> On the other hand, the PTA stated in the LB & FC Report that the purpose of the report is to identify service performance issues and the subsequent resolution of particular issues.<sup>196</sup> The PTA did not object to filing these service quality exception reports.<sup>197</sup>

Although comments were filed addressing this reporting requirement, we affirm our decision in the Tentative Order to further examine this regulation and its necessity in the context of the *Petition of the Consumer Advocate for Rulemaking to amend 52 Pa. Code Chapter 63* pending at Docket No. P-00021985.

<sup>188</sup> Section 3015(f) Review Regarding the Lifeline Tracking Report, Accident Report and Service Outage Report, Docket No. M-00051900 (Order adopted September 9, 2005).

<sup>189</sup> The petition was published Nov. 2, 2002, at 32 Pa.B. 5416 for interested parties to comment.

<sup>190</sup> LB & FC Report at 29.

<sup>191</sup> 52 Pa. Code § 63.55(a).

<sup>192</sup> A waiver exempting a company from complying with any of the subchapter's requirements may be granted by the Commission where unreasonable hardship is demonstrated. 52 Pa. Code § 63.53(e).

<sup>193</sup> LB & FC Report at 29.

<sup>194</sup> MCI May 31, 2005 Comments at 7.

<sup>195</sup> MCI May 31, 2005 Comments at 7-8.

<sup>196</sup> Id.

<sup>197</sup> Id.

### 20. Traffic Usage Studies

In the Tentative Order, we concluded that the biennial filing of the traffic usage studies should continue to be waived while the Commission examines the EAS Task Force's recommendations presently pending before us. However, in the interim, we determined that the Commission's Administrative Law Judges have the discretion to require that traffic usage studies, if needed, be performed on a case by case basis in any pending complaint proceedings addressing EAS issues. Further, we noted that, once the Commission has concluded its work on the EAS Task Force's recommendations at Docket No. M-00031703, we will address whether there is a continuing need for this requirement and any appropriate revisions to our regulations.

As indicated in the LB & FC Report, the Commission's regulations at section 63.72 require all LECs to conduct interexchange toll usage studies to measure the average calling frequency between contiguous exchanges and between exchanges having a toll rate center within 16 miles.<sup>198</sup> The Commission's regulations require that the traffic usage studies be done every two years. Presently, traffic usage studies are required on a case by case basis and are used during an Extended Area Service (EAS) complaint proceeding.

At the present time, the filing of this report on a routine biennial basis by all LECs has been waived. In June 1999, the Commission suspended the requirement to file biennial reports and directed that further evaluation be undertaken regarding the usefulness of the traffic studies.<sup>199</sup> Subsequently, the Commission established an EAS Task Force<sup>200</sup> to determine how to make traffic studies more reflective of the realities existing in the current market place. The PTA participated in the Commission's EAS Task Force and recommended that the existing regulations and traffic usage studies be eliminated.<sup>201</sup>

MCI submitted comments concerning the traffic usage studies. MCI recommends that all regulations associated with EAS should be eliminated which would obviate the need for traffic usage studies.<sup>202</sup> No other comments were filed addressing this reporting requirement.

Based upon our review of section 3015(e) of Chapter 30, the Act does not specifically list that traffic usage studies have to be filed by the LECs. Second, we note that our current regulation at section 63.72 pertaining to biennial traffic usage studies has been waived since 1999 and the current regulations have been examined in the Commission's EAS Task Force. Thus, we conclude that the biennial filing of the traffic usage studies continue to be waived at this time while the Commission examines the EAS Task Force's recommendations presently pending before us.

### 21. Service Life Study Report

In our Tentative Order, the Commission determined that the list of reports permitted by Act 183 does not include a separate service life study report of the type required by section 73.5 of our regulations. We also concluded that this reporting requirement should be waived and staff commence a rulemaking proceeding to

<sup>198</sup> 52 Pa. Code § 63.72.

<sup>199</sup> *Formal Investigation to Examine and Establish Updated Principles and Policies for Telecommunications Services in the Commonwealth Report and Recommendation of the Universal Service Task Force*, Docket No. I-00940035 (Order entered June 30, 1999).

<sup>200</sup> *Report and Recommendation of the Extended Area Service (EAS) Task Force*, Secretarial Letter issued April 1, 2003 at Docket No. M-00031703.

<sup>201</sup> LB & FC Report at 31.

<sup>202</sup> MCI May 31, 2005 Comments at 8.

eliminate the regulation. In addition, we concluded that each LEC remains obligated to file service life study information in the form specified by section 73.5 of our regulations as part of the NMP biennial report consistent with sections 3014(f)(1) and 3015(e)(1).

In the LB & FC Report, the Commission states that it requires telephone utilities providing telephone service with over 50,000 access lines to file service life study reports triennially to reflect estimates for each depreciable group of utility plant used in determining annual depreciation expense.<sup>203</sup> Currently, this reporting requirement applies to the eight largest ILECs<sup>204</sup> but has been waived since 2001.<sup>205</sup> The Commission indicated in the LB & FC Report that depreciation expense is a major item in determining rates of unbundled network elements of ILECs that are leased to CLECs. This report also provides detailed support for depreciation and plant information contained in each company's annual financial and depreciation reports.

The PTA indicated in the LB & FC Report that the service life study report should be waived during the time period that a telecommunications carrier has a Chapter 30 plan in effect. The PTA also indicated that a permanent waiver should be granted to all carriers with existing Chapter 30 plans.<sup>206</sup> No other comments were submitted at this docket.

Upon our review of Act 183 at section 3015(e), the list of reports does not include a separate service life study report of the type required by section 73.5 of our regulations. In addition, this reporting requirement has been waived since 2001. Therefore, we shall waive this filing requirement as it pertains to general filing and reporting obligations, and staff will immediately commence a rule-making proceeding to eliminate the regulation.

At the same time, we note that sections 3014(f)(1) and 3015(e)(1) continue to require the filing of biennial reports in the detail and form required by the Commission as of July 1, 2004,<sup>207</sup> unless the Commission reduces such reporting requirements. The Commission's reporting requirements for biennial updates currently includes a requirement to file service life study reports in the form specified by section 73.5. Therefore, each LEC remains obligated to file this information with its NMP biennial report consistent with sections 3014(f)(1) and 3015(e)(1).

## 22. Capital Investment Plan Report

In our Tentative Order, the Commission determined that the list of reports permitted by Chapter 30 does not include a separate capital investment plan report of the type required by section 73.7 of our regulations.<sup>208</sup> We also concluded that this reporting requirement should be waived and staff should commence a rulemaking proceeding to eliminate the regulation. In addition, we concluded that each LEC remains obligated to file a capital investment plan report in the form specified by section 73.7 of our regulations as part of the NMP biennial report consistent with sections 3014(f)(1) and 3015(e)(1).

Our regulations at section 73.7 require telephone utilities with over 50,000 access lines to file a capital investment plan report which provides an overview of plans for major project expansion, modification, or other alteration of current and proposed facilities.<sup>209</sup> The purpose of this report is to document the companies' plans for future plant investment so that any imprudent plant expenditures can be detected. The Commission indicated in the LB & FC Report that this reporting requirement provides information regarding investment in the Commonwealth infrastructure and reviewed in conjunction with the utilities NMPs.<sup>210</sup> Currently, this reporting requirement applies to the eight largest ILECs<sup>211</sup> but has been waived since 2001.<sup>212</sup>

The PTA favored in the LB & FC Report a permanent waiver to all LECs with Chapter 30 plans.<sup>213</sup> No other comments were submitted concerning this reporting requirement.

Upon our review of Act 183 at section 3015(e), the list of reports does not include a capital investment plan report of the type required by section 73.7 of our regulations. In addition, this reporting requirement has been waived since 2001. Therefore, we shall waive this filing requirement as it pertains to general filing and reporting obligations, and staff will immediately commence a rule-making proceeding to eliminate the regulation.

At the same time, we note that Sections 3014(f)(1) and 3015(e)(1) continue to require the filing of biennial reports in the detail and form required by the Commission as of July 1, 2004,<sup>214</sup> unless the Commission reduces such reporting requirements. The Commission's reporting requirements for biennial updates currently includes a requirement to file capital investment plan reports in the form specified by section 73.7. Indeed, the specific information contained in such capital investment plan reports will be critical to the Commission's ability to evaluate compliance with broadband deployment commitments. Therefore, each LEC remains obligated to file this information as part of its NMP biennial report consistent with Sections 3014(f)(1) and 3015(e)(1).

## 23. Service Records

In our Tentative Order, we concluded that the obligation to keep internal service quality records at section 63.22 of our regulations will continue. At the same time, we determined that the retention of LECs' service records, including the specific nature of the records to be maintained, should be addressed in *Petition for Appeal from Action of Staff filed by the Pennsylvania Telephone Association*, Docket No. M-00031772 (filed January 9, 2004) that is presently pending before us. Also, we noted in the Tentative Order that section 63.22 is not a general filing or reporting requirement; rather, it is a regulation that directs each LEC to keep adequate internal records regarding tests and inspections, service complaints and trouble reports, and service interruptions.<sup>215</sup>

<sup>209</sup> LB & FC Report at 34.

<sup>210</sup> Id.

<sup>211</sup> The affected ILECs are as follows: Alltel, Commonwealth Telephone Company, Conestoga Telephone Company, D&E Telephone Co., North Pittsburgh Telephone Company, United Telephone Company, Verizon North Inc., and Verizon Pennsylvania Inc.

<sup>212</sup> *Petition of Alltel Pennsylvania, Inc., Commonwealth Telephone Co., Conestoga Telephone and Telegraph Co., D&E Telephone Co. and North Pittsburgh Telephone Co. for a Temporary Waiver of the Capital Investment Plan Reporting Requirement Pursuant to 52 Pa. Code § 73.7*, Docket No. P-00011917 (Order entered December 5, 2001).

<sup>213</sup> LB & FC Report at 34.

<sup>214</sup> *Implementation of Chapter 30 of the Public Utility Code: Reporting Requirements for Biennial Updates of Network Modernization Plans Filed Pursuant to 66 Pa.C.S. § 3003(b)(6)*, Docket No. M-00930441 (Order entered May 17, 1999).

<sup>215</sup> 52 Pa. Code § 63.22.

<sup>203</sup> LB & FC Report at 33.

<sup>204</sup> The affected ILECs are as follows: Alltel, Commonwealth Telephone Company, Conestoga Telephone Company, D&E Communications Inc., North Pittsburgh Telephone Company, United Telephone Company, Verizon North Inc., and Verizon Pennsylvania Inc.

<sup>205</sup> *Petition of Alltel Pennsylvania, Inc., Commonwealth Telephone Co., Conestoga Telephone and Telegraph Co., D&E Telephone Co. and North Pittsburgh Telephone Co. for a Temporary Waiver of Service Life Study Reporting Requirement Pursuant to 52 Pa. Code § 73.5(b)*, Docket No. P-00011885 (Order entered June 21, 2001).

<sup>206</sup> Id.

<sup>207</sup> *Implementation of Chapter 30 of the Public Utility Code: Reporting Requirements for Biennial Updates of Network Modernization Plans Filed Pursuant to 66 Pa.C.S. § 3003(b)(6)*, Docket No. M-00930441 (Order entered May 17, 1999).

<sup>208</sup> 52 Pa. Code § 73.7.

The LB & FC Report discussed service records, particularly the requirement at section 63.22(c) that such records be filed with the Commission when a request is made to examine such records.<sup>216</sup> The Commission indicated in the LB & FC Report that the purpose of the record keeping provision is to ensure that utilities keep sufficient records of tests and inspections of facilities, service complaints and trouble reports, service interruptions affecting 300 or more customers and the location and description of its plant. The records are available to the Commission on request and allow the Commission to verify whether proper tests and inspections are conducted and service complaints are addressed. These records are necessary to verify that adequate, efficient, safe and reliable service is being provided to the public.<sup>217</sup>

MCI submitted comments regarding this reporting requirement.<sup>218</sup> MCI does not object to handling this reporting requirement in a separate proceeding as we concluded in our Tentative Order. However, MCI requests that the Commission should permit other interested parties to join in the *Petition for Appeal from Action of Staff* filed by the *Pennsylvania Telephone Association*, Docket No. M-00031772. To do so, MCI requests that the Commission provide notice to all regulated telecommunications providers to file comments on any changes to the regulations addressed in that docket.

No other interested participant filed comments in this docket. However, in the LB & FC Report, the PTA indicated that ILECs must keep records in accordance with the Commission's regulations and that an ILEC must maintain the records at its offices and provide them to the Commission upon request.<sup>219</sup> The PTA did not oppose any changes to the requirement of maintaining service records for inspection by the Commission. However, in the LB & FC Report, the PTA did oppose a request made by the OCA under section 63.22 (c) to obtain access to these service records. PTA argued that the only reports that must be made available to the OCA are those that may be made available to the public, the standard service surveillance level reports as previously discussed in Section 19, supra. The PTA does not object to disclosing the standard service surveillance level reports to OCA.<sup>220</sup>

In terms of Chapter 30's required reports at section 3015(e) and additional Commission authority at section 3019(b)(2), section 63.22 is not a general filing or reporting requirement. As stated previously, section 63.22 is a regulation directing each LEC to keep adequate internal records regarding tests and inspections, service complaints and trouble reports, and service interruptions. Because of the nature of this regulation, we determine that it is not inherent to the reporting requirements of Chapter 30 at section 3015(e). At this time, we find that the obligation to keep internal service quality records at section 63.22 of our regulations will continue until we dispose of the matter in the pending *Petition for Appeal from Action of Staff* filed by the *Pennsylvania Telephone Association* at Docket No. M-00031772.

#### 24. Affiliated Interest Agreement

In the Tentative Order, we determined that the LECs are required to continue to file their affiliated interest agreements in accordance with sections 2101 and 2102 of Title 66 and Act 183. Also, we found that, although affiliated interest agreements are not listed on the reports to be filed by LECs at Section 3015(e), section 3019(b)(1)

requires the LECs to file affiliated interest and affiliated transaction agreements unless such agreements involve services declared competitive. In addition, we determined that section 3019(b)(1) provides that the filings shall constitute notice to the Commission only and shall not require approval by the Commission.

In the LB & FC Report, the Commission indicated that affiliated interest agreements are reviewed to ensure that all public utilities comply with the statute to ensure that there is no self-dealing by the utility. As prescribed by Title 66 at sections 2101 and 2102,<sup>221</sup> the filing of affiliated interest agreements applies to all public utilities that enter into a contract or arrangement with an affiliate to provide service or purchase or lease of any property.

No comments were received concerning this reporting requirement. However, the PTA noted in the LB & FC Report that this filing notifies the Commission of affiliated interest transactions and suggested no changes in the reporting requirement.<sup>222</sup>

We affirm our determinations as stated in the Tentative Order. In reviewing Chapter 21 of the Public Utility Code in conjunction with Act 183, we find that section 3019(b)(1) requires the LECs to file affiliated interest and affiliated transaction agreements unless such agreements involve services declared competitive. In addition, section 3019(b)(1) provides that the filings shall constitute notice to the Commission only and shall not require approval by the Commission. Therefore, the LECs continue to be required to file the agreements in accordance with Section 2101 and 2102 of Title 66 and Act 183 for notice only and not approval purposes.

#### 25. NMP Biennial Reports

In the Tentative Order, the Commission found that section 3014(f)(1) continues to allow biennial NMP reports to be filed in the form and detail required by the Commission as of July 1, 2004. We also determined that section 3014(f)(2) permits the Commission to require "submission of further information to support the accuracy of or to seek an explanation of the [NMP] reports."<sup>223</sup> In addition, we found that Chapter 30 permits the filing of NMP reports at section 3015(e)(1) and therefore determined that no revision is needed to the Commission's 2004 Policy Statement or 1999 Order requiring biennial NMP reports.

In the LB & FC Report, the Commission explained the filing of biennial NMP reports as required by our 2004 Policy Statement<sup>224</sup> and 1999 Order<sup>225</sup> so that the Commission is provided the necessary details of each LEC's progress toward meeting its network modernization objectives. The NMP reports are unique to the specific Chapter 30 petition filed by a LEC and subsequently approved by the Commission.<sup>226</sup>

At the time of the LB & FC Report, the PTA described the biennial NMP reports as demonstrating a LEC's commitment to accelerate the modernization of its network by providing the carrier's current and projected deployment of its network and the LEC's penetration levels by type of service, including depreciation and capitalization information. The PTA also noted that its

<sup>221</sup> 66 Pa.C.S. §§ 2101 and 2102.

<sup>222</sup> LB & FC Report at 36.

<sup>223</sup> Act 183 at §§ 3014(f)(1) and (2).

<sup>224</sup> *Sunset of Chapter 30, Title 66 of the Public Utility Code*, Docket No. M-00041786 (Order adopted January 16, 2004).

<sup>225</sup> *Implementation of Chapter 30 of the Public Utility Code: Reporting Requirements for Biennial Updates of Network Modernization Plans Filed Pursuant to 66 Pa.C.S. § 3003(b)(6)*, Docket No. M-00930441 (Order entered May 17, 1999).

<sup>226</sup> LB & FC Report at 37.

<sup>216</sup> LB & FC Report at 35.

<sup>217</sup> Id.

<sup>218</sup> MCI May 31, 2005 Comments at 2-3.

<sup>219</sup> Id.

<sup>220</sup> Id.

member companies are abiding by the current reporting requirements developed by the Commission.<sup>227</sup> No other comments were submitted in this docket.

Therefore, we affirm our determinations in the Tentative Order. In reviewing Chapter 30, we find that the General Assembly, at Section 3014(f)(1), continues to allow biennial NMP reports to be filed in the form and detail required by the Commission as of July 1, 2004. In addition, the Legislature at Section 3014(f)(2) permits the Commission to require "submission of further information to support the accuracy of or to seek an explanation of the [NMP] reports."<sup>228</sup> Further, Act 183 permits the filing of NMP report at Section 3015(e)(1). Thus, we find that no revision is needed to the Commission's 2004 Policy Statement or 1999 Order requiring biennial NMP reports in light of Act 183's passage.

## 26. Collocation Report

In the Tentative Order, the Commission concluded that no action was needed to eliminate this reporting requirement since the Commission no longer requires this reporting requirement as set forth in its February 14, 2005 Secretarial Letter to all ILECs and CLECs.<sup>229</sup> Originally, this report was required to inform the Commission about the quality of Verizon Pennsylvania Inc.'s collocation provisioning to CLECs.<sup>230</sup> In the LB & FC Report, the Commission indicated that this reporting requirement applies to CLECs or ILECs that collocate switches in Verizon Pennsylvania's central offices.

No comments were filed regarding this reporting requirement. Therefore, we affirm the determination in our Tentative Order concerning collocation reports and conclude no further action is necessary.

Based on our review of the comments submitted in this docket, Chapter 30 and the LB & FC report, the Commission directs the continuation, consolidation and/or elimination of the reporting requirements presently imposed on LECs operating in Pennsylvania, *Therefore,*

*It Is Ordered That:*

1. The annual financial report as required by 52 Pa. Code § 63.36 and pursuant to § 3015(e)(2) shall be filed by October 31, 2005 in the format agreed to by the Commission's Bureau of Fixed Utility Services and the Pennsylvania Telephone Association in the August 9, 2005 stipulation as Appendix A filed at this docket. This format shall apply to all incumbent and competitive LECs and shall be filed by October 31, 2005 as discussed herein. In subsequent years, the filing date for the LECs annual financial report shall be in accordance with the Commission's regulations at section 63.36.

2. Law Bureau shall immediately initiate rulemaking proceedings to eliminate the following reports for telecommunications carriers only:

- Financial Earnings Report, 52 Pa. Code § 71.3
- Annual Depreciation Report, 52 Pa. Code § 73.3
- Interest On Deposits Report, 52 Pa. Code § 64.41
- Service Life Study Report, 52 Pa. Code § 73.5
- Capital Investment Plan Report, 52 Pa. Code § 73.7

<sup>227</sup> Id.

<sup>228</sup> 66 Pa.C.S. §§ 3014(f)(1) and (2).

<sup>229</sup> Secretarial Letter to All Incumbent Local Exchange Carriers and All Competitive Local Exchange Carriers, dated February 14, 2005 at Docket Nos. R-00994697 and R-00994697C0001.

<sup>230</sup> *Bell-Atlantic Supplement to Pa. P.U.C. No. 216 and Pa. P.U.C. 218 to become effective July 27, 1999, Regarding the FCC's New Requirements on Incumbent Local Exchange Carriers for the Provision of Collocation Service Used for Exchange Access and Mandated Compliance via State Tariffs, SGATS and/or Individual Interconnection Agreements*, Docket No. R-00994697 (Order entered September 4, 2001).

- Residential Account Information on a quarterly basis as required by 52 Pa. Code § 64.201(b)

- Quarterly Cramming Reports, 52 Pa. Code § 64.23 (a)(6)

- Quarterly Slamming Report, 52 Pa. Code § 64.23 for long distance and local slamming

- Collocation Report, Docket Nos. R-00994697 and R-00994697C0001.

These regulations are hereby waived pending completion of these rulemakings. In terms of the Financial Earnings Report at Docket No. M-00041857, the filing date of March 31, 2005 continues to be waived as prescribed in the Commission's March 11, 2005 Secretarial Letter.

3. To the extent the Interest on Deposits report at Docket No. P-00981357, the Collocation Report at Docket No. R-00994697, and a streamlined Financial Earnings Report are required by Commission orders, the Commission hereby rescinds those orders since no comments to the contrary were filed at this docket.

4. In accordance with Act 183, the following reports, filings and obligations shall remain in place:

- Network Modernization Implementation Plan pursuant to § 3015(e)(1) and § 3014(f)

- Annual Financial Report pursuant to § 3015(e)(2) as subject to the August 9, 2005 stipulation and Appendix A filed at this docket

- Annual Tracking Report of Telecommunications Relay Service Surcharges as required by 52 Pa. Code § 69.513(a) and pursuant to § 3015(e)(3)

- Residential Account Information as required by 52 Pa. Code § 64.201 and pursuant to § 3015(e)(4) on an annual basis

- Universal Service Fund Contributions as required by 52 Pa. Code § 63.165; and Universal Service Monthly Remittance Worksheet as required by 52 Pa. Code § 63.169 and pursuant to § 3015(e)(5)

- Annual Access Line Report as required by 52 Pa. Code § 69.513(b) and pursuant to § 3015(e)(6)

- Assessment Report, Annual Assessment Bill and Supplemental Assessment Bill as required by 66 Pa.C.S. § 510(b) and pursuant to § 3015(e)(7)

- STAS Report as required by 52 Pa. Code § 69.52—56 and pursuant to § 3015(e)(8)

- Physical Cyber Security Planning Self Certification pursuant to *Revised Final Rulemaking Order Re: Public Utility Security Planning and Readiness*, Docket No. L-00040166 as published in the *Pennsylvania Bulletin* on June 11, 2005

- Chapter 30 Annual Price Stability Mechanism Report required by Docket No. M-00041786 and pursuant to §§ 3014 and 3015

- Affiliated Interest Agreements as required by 66 Pa.C.S. §§ 2101, 2012 and pursuant to 3019(b)(1) only for notice and not approval purposes.

5. In accordance with Act 183, the Lifeline Tracking Report as required by Docket No. P-00991648, the Accident Reports, per occurrence, as required by 52 Pa. Code § 63.11 and 66 Pa.C.S. § 1508, and the Service Outage Reports, per occurrence, as required by 52 Pa. Code

§ 67.1 shall remain in place subject to the outcome of the proceeding described in this order at Docket No. M-00051900.

6. The following reports, filings and obligations shall be waived:

- Traffic Usage Studies as required by 52 Pa. Code § 63.72 pending the Commission's rulemaking at Docket No. M-00031703

- State Certification of USF Support of Eligible Telecommunications Carriers per 47 C.F.R. § 54.314 suspended pursuant to *Petition of the Pennsylvania Independent Telco Coalition for Designation as Eligible Telecommunications Carriers for both State and Federal Purposes*, Docket No. P-00971264 (Order entered June 11, 2004).

7. In accordance with Act 183, following reports, filings and obligations shall remain in place subject to the outcome of the proceedings described in this order:

- Annual Report of Certified Interexchange Transporter as required by 52 Pa. Code § 63.107 and as addressed in *Proposed Rulemaking for Revision of Chapter 63 of Title 52 of the Pennsylvania Code Pertaining to Regulation of Interexchange Telecommunications Carrier and Service*, Docket No. L-00050170 (Order entered March 29, 2005)

- Standard Service Surveillance Level Report, per occurrence, as required by 52 Pa. Code § 63.53 and as addressed in *Petition of the Consumer Advocate for Rulemaking to amend 52 Pa. Code Chapter 63* pending at Docket No. P-00021985

- Service Records, per occurrence, as required by 52 Pa. Code § 63.22(c) and as addressed in *Petition for Appeal from Action of Staff filed by the Pennsylvania Telephone Association* pending at Docket No. M-00031772.

8. In accordance with 66 Pa.C.S. § 3014(f) (1), LECs shall continue to file biennial NMP update reports in the form and detail required by the Commission as of July 1, 2004.

9. A copy of this final implementation order be served on all incumbent and competitive local exchange telecommunications carriers, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Telephone Association. Notice of this order shall be published in the *Pennsylvania Bulletin*.

10. All waivers of the Commission's regulations as granted in this final implementation order shall be effective upon the entry date of this order and will remain in effect until further action by the Commission.

JAMES J. MCNULTY,  
Secretary

#### Statement of Commissioner Bill Shane

*Public Meeting September 9, 2005; SEPT-2005-L-0078\**

*Final Implementation Order Regarding PUC Filing and Reporting Requirements on Local Exchange Carriers; M-00041857*

By our action today, we are eliminating, modifying and/or waiving certain reporting requirements in accordance with Act 183 and, thereby, relieving local exchange companies of, in some cases, a great burden. I commend the parties and the staff for their diligence in this effort but I would be remiss if I did not, at the same time, call to task the Pennsylvania Telephone Association for its assertion that accident reports and service outage reports are no longer required to be filed with this Commission. In this day of competition and deregulation, there is

nothing more important than the Commission insuring that the service offered by all utilities is both safe and reliable. Accident and service outage reporting is critical to the Commission's ability to meet this mandate. The comments by the PTA that we may not require these reports and that they must be discontinued is quite disconcerting and, while I might be understanding of a utility's desire to control costs, I am not willing to compromise on safety and reliability and neither should any utility.

#### Statement of Commissioner Terrance J. Fitzpatrick

*Public Meeting September 9, 2005; SEPT-2005-L-0078\**

*Final Implementation Order Regarding PUC Filing and Reporting Requirements on Local Exchange Carriers; M-00041857*

This matter involves the Final Implementation Order arising from the Commission's review of its filing requirements for local exchange carriers following the passage of Act 183 of 2004 (Act), 66 Pa.C.S. § 3011 et seq. In the Act, the Legislature limited the reporting that the Commission may require from local exchange carriers (LECs or carriers) to a list of nine specific reports. 66 Pa.C.S. § 3015(e). The purpose of this proceeding is to determine how the Commission's current reporting requirements must be changed in light of the new legislation, and to initiate changes to the Commission's regulations where appropriate.

The Law Bureau recommends that the Commission adopt an Order that concludes that the Commission may continue to require, among others, the following current reports: the lifeline tracking report, the quarterly local slamming report (but now on an annual basis as part of the "annual service report"), accident reports, and outage reports. However, the Commission today is adopting the Motion of Commissioner Pizzingrilli, which 1) concludes that the quarterly local slamming report shall no longer be required because it is not listed in Section 3015(e), and 2) tentatively concludes that the lifeline tracking report, accident report, and outage report should continue to be required under Section 3015(f), described below. With regard to the continuation of the latter three reports, the Motion calls for issuance of a tentative order that would allow the parties to file comments on whether these reports may be continued under Section 3015(f). For reasons set forth below, I will vote in support of the Motion.

First, for reasons set forth in this Statement, I agree that none of the four reports in question may be required under Section 3015(e). Second, with regard to the conclusion that three of the reports may be required under Section 3015(f), I will support this aspect of the Motion because it is not final and allows the parties to file further comments. I have my doubts about whether these reports may be required under Section 3015(f)—specifically, whether the reports are related to determining that the rates of the LEC comply with applicable law. However, while some of the parties addressed subsection (f) in passing, we have not received detailed legal arguments on the proper interpretation of that language.<sup>231</sup> Accordingly, I will reserve final judgment until after reviewing the additional comments.

<sup>231</sup> For example, must the Commission find that both (i) and (ii) of Section 3015(f) are satisfied?

The remainder of this Statement explains my reasons for concluding that the four reports may not be required under Section 3015(e).

The Commission's task in this proceeding is to interpret the new law. The first principle of statutory interpretation is that the goal must be to "ascertain and effectuate the intention of the General Assembly." Section 3 of the Statutory Construction Act, 1 Pa.C.S. § 1921(a). The Statutory Construction Act further provides that "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). However, if the words of a statute are ambiguous, the intention of the General Assembly may be ascertained by considering, among other things:

- (1) The occasion and necessity for the statute.
- (2) The circumstances under which it was enacted.
- (3) The mischief to be remedied.
- (4) The object to be attained.

\* \* \*

- (6) The consequences of a particular interpretation.  
1 Pa.C.S. § 1921(c).

Prior to discussing the individual reports, a general discussion of the historical background and purpose of Section 3015(e) is necessary. This section provides that the Commission filing requirements for LECs "shall be limited" to the nine specific reports that are listed. It is obvious that the overall legislative intent behind Section 3015(e) was to restrict the reports that the Commission could require of LECs. Using the language of the Statutory Construction Act, over-regulation—in the form of requiring too many reports—was the "mischief to be remedied" here. 1 Pa.C.S. § 1921(c)(3). Stated differently, the "object to be attained" was to restrict the discretion of the Commission to require reports to move toward the goal of easing regulation of LECs. 1 Pa.C.S. § 1921(c)(4).

In addition, the language of Section 3015(e) must be considered in light of its historical context. Prior to the passage of the Act, there was a public debate over the Commission's reporting requirements for LECs. The carriers argued, via the Pennsylvania Telephone Association (PTA), that they had not received the regulatory relief to which they were entitled under the former Chapter 30 law. To evaluate this claim, the House of Representatives adopted House Resolution No. 786 in 2004. This Resolution required the Legislative Budget and Finance Committee (LBFC) to review the Commission's reporting requirements to determine whether all of the reports being required by the Commission were needed. The LBFC issued its report in November 2004.<sup>232</sup> The LBFC report listed and discussed each of the reports individually and summarized the positions of the Commission and the PTA on each one. The LBFC report contained five general recommendations, but did not take a position on the need for individual reports (pp. S-3, S-4).

### Lifeline Tracking Report

Staff recommends that the Commission continue to require LECs to file lifeline tracking reports. First, the draft order states that the reports are needed so that the Commission can monitor compliance with the lifeline provisions of the new law. See, 66 Pa.C.S. § 3019. Second, the draft order finds that lifeline tracking reports are a

form of "universal service reports" that the Commission is authorized to require under Section 3015(e)(5). Neither argument is persuasive.

As to the need for the report, this Commission's perception of need cannot be elevated above that of the General Assembly. *Western Pa. Water Co. v. Pa. Public Utility Commission*, 10 Pa. Commw. 533, 311 A.2d 370 (Pa. Commw. 1973) (The Commission is a creature of the legislative process, and it has only those powers, duties, responsibilities and jurisdiction given to it by the Legislature). The lifeline tracking report was recognized as a separate report prior to passage of Act 183—for example, it was listed and discussed separately in the LBFC report (p. 17).<sup>233</sup> Since the General Assembly declined to list the lifeline tracking report as one of the reports that may be continued, it must be assumed that the General Assembly was not convinced that the report was needed.

Third, the term "universal service reports" cannot be interpreted to include the lifeline tracking report. While I disagree with the PTA argument that the term "universal service reports" is clear on its face,<sup>234</sup> the canons of statutory construction preclude interpreting the term to include the lifeline tracking report. Again, the overall thrust of Section 3015(e) was to restrict the reports the Commission may require from LECs. The General Assembly declined to list the lifeline tracking report as a report that could be continued. Given the "mischief to be remedied" by Section 3015(e), as well as "the object to be attained," and "the circumstances under which it was enacted," this omission can only be interpreted as reflecting a legislative intent to discontinue the report. See, 1 Pa.C.S. § 1921(c).

The argument that the lifeline tracking report may be continued as one of the "universal service reports" permitted in the Act is tantamount to slipping the report in through the back door (via "interpretation"), even though the General Assembly barred it from coming in through the front door (by leaving it off the list of permissible reports). This broad interpretation of the term "universal service reports" flies in the face of the legislative intent underlying Section 3015(e)—to restrict the discretion of the Commission to require reports.

### Slamming Reports

Staff recommends that the Commission require local slamming reports, on an annual rather than quarterly basis, as part of the "annual service report" that the Commission may require under Section 3015(e)(4). I disagree.

The analysis of this issue is similar to that described above in the discussion of the lifeline tracking report. The General Assembly declined to include the quarterly slamming report in the list of reports that may be continued even though it was recognized as one of the Commission's existing reporting requirements prior to the passage of Act 183. (LBFC report, p. 25) Under the circumstances, this can only be interpreted as reflecting a legislative intent to discontinue the report.

<sup>233</sup> Prior to the LBFC report, PTA had taken the position that the lifeline tracking report could be continued. This is reflected in the discussion in the LBFC report. However, this is a moot point since Act 183 has now resolved the dispute over what reports may be required.

<sup>234</sup> Of the reports described in Section 3015(e)(1)–(9), all but two appear to refer to specific reports currently required by the Commission. However, it appears that "annual service report" (no. 5) and "universal service reports" (no. 4) are generic descriptions of reports rather than references to particular reports that are currently required.

<sup>232</sup> *PUC Filing and Reporting Requirements on Local Exchange Carriers*, House Legislative Budget & Finance Committee, November 2004 (LBFC report).



In addition, staff concludes that the “annual service report” under Section 3015(e)(4) logically represents residential account information collected per 52 Pa. Code § 64.201 “Annual LEC Reporting Requirements.” The § 64.201 report compiles information, for example, on average bills for basic and toll service, service suspensions, service terminations, and uncollectibles. Incorporating a slamming report into the “annual service report” frustrates the legislative intent to restrict reporting requirements.

### Accident Reports and Service Outage Reports

Staff concludes that the Commission may continue to require accident reports and service outage reports, despite the fact that these reports are not included in the list of permissible reports contained in Section 3015(e). The rationale for this conclusion is, first, that subsections 3019(b)(2) and (3) retain the Commission’s authority to regulate service quality and consumer protection. Second, the draft order states that Section 3015(e) relates only to “general filing requirements,” which the order interprets as applying solely to annual and quarterly reports. Since accident and outage reports are only filed on a per incident basis, they allegedly do not fall under “general filing requirements.”

This conclusion is inconsistent with both the letter and spirit of Act 183. With regard to the Commission’s authority under Section 3019, that section provides specifically that the Commission’s authority to regulate service quality is “subject to the provisions of Section 3015(e).” 66 Pa.C.S. § 3019(b)(3). Since accident and outage reports are not contained in the list of permissible reports under Section 3015(e), it is clear that Section 3019 does not provide a basis for requiring the reports.

Moreover, the fact that the Commission retains general authority to regulate service quality is not a sufficient basis to require these reports. Presumably, any report the Commission has ever required is related in some way to the Commission’s regulatory authority. Accordingly, accepting this argument would negate the legislative restrictions in Section 3015(e) on the Commission’s authority to require reports.

Finally, the argument that accident and outage reports may be required because they do not constitute “general filing requirements” under Section 3015(e) is unpersuasive. The contention that “general filing requirements” applies only to annual and quarterly reports does not have any basis in the Act. These reporting requirements are “general” in the ordinary sense of the word since all LECs have been required to file them when accidents or outages occur that fall within the scope of the regulations. The fact that such events, and therefore the reports, are intermittent does not mean that the reports do not fall under “general filing requirements.”

This interpretation is supported by the LBFC report, which separated the reporting requirements of LECs into “Annual reports” and “Other required reports.” (LBFC report, pp. i-ii). The LBFC report did not suggest that only annual reports fall under “general filing requirements.” Moreover, the fact that the LBFC report discussed both annual and other reports demonstrates that the scope of the controversy included both types of reports.

### Conclusion

For the reasons set forth above, I conclude that the four reports at issue may not be required under Section 3015(e). As to whether three of the reports may be required under Section 3015(f), while I have my doubts, I will withhold final judgment pending review of additional comments.

[Pa.B. Doc. No. 05-1962. Filed for public inspection October 21, 2005, 9:00 a.m.]

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105, with a copy served on the applicant by November 14, 2005. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

#### Applications of the following for approval to *begin operating as common carriers for transportation of persons as described under each application.*

**A-00122137. Dale A. Reisinger** (9638 Hill Road, Conneautville, Crawford County, PA 16406-2136)—persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the County of Crawford, to points in Pennsylvania, and return.

**A-00122146. Andre F. Bowman** (8256 Natures Drive, Tobyhanna, Monroe County PA 18466)—persons upon call or demand, in the County of Monroe.

**A-00122149. Success America** (1813 Easton Road, Willow Grove, Montgomery County, PA 19090), a non-profit corporation of the Commonwealth—persons, in paratransit service, between points in the Townships of Upper Moreland and Abington, Montgomery County, and within an airline distance of 20 statute miles of the limits thereof.

**A-00122163. Lifestar Ambulance, Inc.** (15 Ardrossan Avenue, West Chester, Chester County, PA 19382), a non-profit corporation of the Commonwealth—persons in paratransit service, from points in the County of Chester, to points in Pennsylvania, and return.

**A-00122145. Unique Limousine Concepts, Inc.** (2 Charles Street, Malvern, Chester County, PA 19335), a corporation of the Commonwealth—persons, in limousine service, from points in the Counties of Delaware, Chester and Philadelphia, to points in Pennsylvania, and return. *Attorney: James Lamb, 340 Vets Hwy., Commack, NY 11725.*

**A-00122147. Eli Surkis t/d/b/a Eli-Al Cab Co.** (8230 Fairview Road, Elkins Park, Montgomery County, PA 19027)—persons, upon call or demand, in the Township of Upper Merion, Montgomery County.

**A-00122159. Eugene Henry Horst** (2820 Stumptown Road, Bird-In-Hand, Lancaster County, PA 17505)—persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the County of Lancaster, to points within an airline distance of 50 statute miles of the limits of the Township of Upper Leacock, Lancaster County, and return.

**A-00122141. Ernest S. Lantz** (85 Old Race Track Road, Coatesville, Chester County, PA 19320)—persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the County of Lancaster, and those points in the County of Chester located on and west of SR 10, beginning at the Lancaster/Chester County line, then southwardly on SR 10 to its intersection with SR 41, thence southeastwardly on SR 41 to the Pennsylvania/Delaware State line, including the Borough of Parkesburg, to points in Pennsylvania, and return.

**A-00122142. Paul Redcay** (865 Green Spring Road, Newville, Cumberland County, PA 17241)—persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the County of Cumberland, to points in Pennsylvania, and return.

**A-00122143. Promobile Transportation, Inc.** (9 Ivy Lane, Yardley, Bucks County, PA 19067-1807), a corporation of the Commonwealth—persons in paratransit service, between points in the following territory bounded as follows: beginning at the intersection of SR 611 and US Route 1, in the City and County of Philadelphia, proceed north on SR 611 to its intersection with I-276, proceed eastward on I-276 to the Delaware River, follow the Delaware River southward to SR 72, proceed westward on SR 72 to Keystone Street, proceed on Keystone Street onto Robbins Street, proceed on Robbins Street to US Route 1, proceed on US Route 1 to its intersection with SR 611, the beginning point, and from points in said territory, to points in Pennsylvania, and return.

**A-00122144. H & S Limousine Service, Inc.**, a corporation of the Commonwealth (1076 Bethlehem Pike, Suite 202, Montgomeryville, Montgomery County, PA 18936)—persons in limousine service, from points in the Counties of Bucks and Montgomery, to points in Pennsylvania and return. *Attorney:* Ethan W. Smith, Esquire, Starfield & Smith, PC, 501 Office Center Drive, Suite 350, Fort Washington, PA 19034.

**Application of the following for amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for transportation of persons as described under the application.**

**A-00088889. Folder 2, Am-F. Hegins Valley Lines, Inc.** (P. O. Box 507, Millersburg, Dauphin County, PA 17061), a corporation of the Commonwealth—which grants the right, inter alia, persons, on schedule between the Lykens Valley Plaza on Route 209, north of Elizabethville, Dauphin County, and the various points in the City

of Harrisburg, Dauphin County, by way of the following routes: from the Lykens Valley Plaza, located north of Elizabethville on Route 209; proceeding along Route 209 to Elizabethville and the junction of Routes 209 and 225; then proceeding along Route 225 to Halifax. When this transport reaches Halifax, a determination will be made by Hegins Valley as to whether one bus can transport the rider ship from the Lykens Valley Plaza and the Borough of Millersburg to the City of Harrisburg. If, in the opinion of Hegins Valley, one bus can reasonably transport the rider ship, then Hegins Valley shall transfer all the passengers to one bus at Halifax to transport the passengers to the various city streets in the City of Harrisburg. If, in the opinion of Hegins Valley, one bus cannot reasonably accommodate the rider ship for both transports, then Hegins Valley shall utilize two buses from Halifax to the various city streets in the City of Harrisburg. If Hegins Valley has utilized two buses in the morning to transport passengers from Halifax to the City of Harrisburg and it is reasonably determined by Hegins Valley that two transports will be needed in the afternoon to accommodate the passengers from the return trip, then Hegins Valley will provide two transports for the return trip to Millersburg and Lykens. Upon reaching the Halifax area, one transport will proceed northward along Route 147 until it reaches Millersburg. The other transport will proceed along Route 225 through the areas of Fisherville and Elizabethville. After reaching Elizabethville, the transport will proceed along Route 209 to the Lykens Valley Plaza. If Hegins Valley utilized one bus to transport passengers from Halifax to the City of Harrisburg and the determination is made that one bus will reasonably accommodate on the return trip the passengers transported in the morning, which determination shall be made by Hegins Valley, then Hegins Valley shall utilize only one transport for the return trip to Millersburg and the Lykens Valley Plaza. This return trip will proceed from the various city streets in the City of Harrisburg to Halifax, continuing along Route 147 to Millersburg, at which points the bus will continue along Route 209 to the Lykens Valley Plaza; with the right to pick up and discharge passengers at any point along the route between Lykens Valley Plaza and the Borough of Dauphin, Dauphin County; subject to the following condition: the service herein authorized should be limited to those persons commuting between home and their place of employment: *So As To Permit* the transportation of persons on scheduled route service as follows: Beginning at the Lykens Valley Plaza, located north of the Borough of Elizabethville, Dauphin County, on Route 209; thence proceeding west on Route 209 to the Borough of Millersburg, Dauphin County, where Route 209 meets Route 147; thence proceeding southward on Route 147 to the Clarks Ferry Bridge where Route 147 merges with Route 22/322; thence continuing southward along Route 22/322 to various city streets in the City of Harrisburg, Dauphin County; with the right to pick up and discharge passengers at any point between Lykens Valley Plaza and the Borough of Dauphin, Dauphin County.

**Application of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under the application.**

**A-00121186, Folder 2. Executive Transport Services, LLC** (351 Sycamore Mills Road, Media, Delaware

County, PA 19063)—persons in limousine service, between points in Pennsylvania, which is to be a transfer of the rights authorized under the certificate issued at A-00118211 to R & L Limousine, Inc., subject to the same limitations and conditions. *Attorney:* Andrew D. Santana, 1250 South Broad Street, P. O. Box 431, Lansdale, PA 19446-0431.

**Application of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under the application.**

**A-00122132, Folder 2. Roman Transportation Services, Inc.** (75 North 61st Street, Harrisburg, Dauphin County, PA 17111)—persons in paratransit service, from points in the County of Dauphin to points in Pennsylvania and return.

**Application of the following for approval of the right to begin to operate as a broker for the transportation of persons as described under the application.**

**A-00122118, Absolutely Pittsburgh, LLC** (200 Queenston, Pittsburgh, Allegheny County, PA 15210)—broker, to arrange for the transportation of persons between points in Pennsylvania.

**Application of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of household goods in use as described under the application.**

**A-00121037, Folder 2. J A Transportation, Inc. t/d/ b/a Countrywide Moving & Storage** (915 Madison Avenue, Norristown, Montgomery County, PA 19403) a corporation of the Commonwealth—household goods in use, from points in the City of Norristown, Montgomery County, and within an airline distance of 30 statute miles of miles of the limits of said city, to points in Pennsylvania and vice versa. *Attorney:* Richard T. Mulcahey, Jr., Esquire, 1500 John F. Kennedy Boulevard, Suite 1400, Philadelphia, PA 19102-1890.

**Applications of the following for the approval of the right and privilege to discontinue/abandon operating as common carriers by motor vehicle and for cancellation of the certificate of public convenience as described under each application.**

**A-00115315. Terry A. Christy and Darlene C. Christy t/a Christy Cab Co.**, tenants by the entirety, (1301 Frankstown Road, Johnstown, Cambria County, PA 15902)—certificate of public convenience to abandon/discontinue the right to transport, as a common carrier by motor vehicle; persons upon call or demand, in the Borough of Windber, Somerset County, and within an airline radius of 7 statute miles, which is held at A-00115315.

**A-00107066, Folder 3. Willard A Wilkinson, IV, Wilkinson Bus Lines** (140 Industrial Drive, P. O. Box 95, Cresson, Cambria County, PA 16630)—certificate of public convenience to abandon/discontinue the right to transport, as a common carrier by motor vehicle; persons in limousine service, between points in Pennsylvania, which is held at A-00107066, F.3.

**A-00088889, Folder 2. Hegins Valley Lines, Inc.** (Box 507, Millersburg, Dauphin County, PA 17061), a corporation of the Commonwealth—partial discontinuance of service—of the following right which reads as follows: to transport persons on schedule, between the Borough of Elizabethville and the Borough of Halifax, both in Dauphin County, by way of SR 225.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1963. Filed for public inspection October 21, 2005, 9:00 a.m.]

## Telecommunications

**A-310814F7004. Alltel Pennsylvania, Inc. and US LEC of Pennsylvania, Inc.** Joint petition of Alltel Pennsylvania, Inc. and US LEC of Pennsylvania, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Alltel Pennsylvania, Inc. and US LEC of Pennsylvania, Inc., by its counsel, filed on October 11, 2005, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Alltel Pennsylvania, Inc. and US LEC of Pennsylvania, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1964. Filed for public inspection October 21, 2005, 9:00 a.m.]

## Telecommunications

**A-310125F7001. Verizon North, Inc. and AT&T Communications of Pennsylvania.** Joint petition of Verizon North, Inc. and AT&T Communications of Pennsylvania for approval of amendment no. 4 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North, Inc. and AT&T Communications of Pennsylvania, by its counsel, filed on September 30, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of amendment no. 4 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North, Inc. and AT&T Communications of Pennsylvania joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1965. Filed for public inspection October 21, 2005, 9:00 a.m.]

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### Telecommunications

**A-310213F7001. Verizon North, Inc. and Teleport Communications Group, Inc. d/b/a TCG Pittsburgh and TCG Delaware Valley, Inc.** Joint petition of Verizon North, Inc. and Teleport Communications Group, Inc. d/b/a TCG Pittsburgh and TCG Delaware Valley, Inc. for approval of amendment no. 4 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North, Inc. and Teleport Communications Group, Inc. d/b/a TCG Pittsburgh and TCG Delaware Valley, Inc. by its counsel, filed on September 30, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of amendment no. 4 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North, Inc. and Teleport Communications Group, Inc. d/b/a TCG Pittsburgh and TCG Delaware Valley, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1966. Filed for public inspection October 21, 2005, 9:00 a.m.]

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### Telecommunications

**A-310125F7000. Verizon Pennsylvania, Inc. and AT&T Communications of Pennsylvania.** Joint petition of Verizon Pennsylvania, Inc. and AT&T Communications of Pennsylvania for approval of amendment no. 2 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. and AT&T Communications of Pennsylvania, by its counsel, filed on September 30, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of amendment no. 2 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. and AT&T Communications of Pennsylvania joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1967. Filed for public inspection October 21, 2005, 9:00 a.m.]

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### Telecommunications

**A-311365F7000. Verizon Pennsylvania, Inc. and CloseCall America, Inc.** Joint petition of Verizon Pennsylvania, Inc. and CloseCall America, Inc. for approval of an interconnection agreement and amendment no. 1 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. and CloseCall America, Inc., by its counsel, filed on September 30, 2005, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement and amendment no. 1 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc., and CloseCall America, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1968. Filed for public inspection October 21, 2005, 9:00 a.m.]

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### Telecommunications

**A-310258F7000. Verizon Pennsylvania, Inc. and TCG Delaware Valley, Inc.** Joint petition of Verizon Pennsylvania, Inc. and TCG Delaware Valley, Inc. for approval of amendment no. 4 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. and TCG Delaware Valley, Inc., by its counsel, filed on September 30, 2005, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment no. 4 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. and TCG Delaware Valley, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1969. Filed for public inspection October 21, 2005, 9:00 a.m.]

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### Telecommunications

**A-310213F7000. Verizon Pennsylvania, Inc. and TCG—Pittsburgh, Inc.** Joint petition of Verizon Pennsylvania, Inc. and TCG—Pittsburgh, Inc. for approval of amendment no. 3 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. and TCG—Pittsburgh, Inc., by its counsel, filed on September 30, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of amendment no. 3 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. and TCG—Pittsburgh, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1970. Filed for public inspection October 21, 2005, 9:00 a.m.]

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## PHILADELPHIA REGIONAL PORT AUTHORITY

### Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #05-072.6, Monitoring & Repairs Fire Alarm Equipment, Bldg. #1A, Packer Avenue Marine Terminal (PAMT), until 2 p.m. on Thursday, November 17, 2005. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Avenue, 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available November 1, 2005. Additional information and project listings may be found at [www.philaport.com](http://www.philaport.com). The cost of the bid document is \$35 (includes 7% Pennsylvania Sales Tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal opportunity laws and regulations. Bidders must provide to the

Procurement Department in writing the names of individuals that will be attending prebid meetings. This information is needed 24 hours prior to the meeting. Fax to (215) 426-2600, Attn: Procurement Department.

A mandatory prebid job site meeting will be held on November 10, 2005, at 11 a.m. at PAMT, Columbus Blvd. Service Road at South Gate, 1/2 mile south of Walt Whitman Bridge, Philadelphia, PA 19148.

JAMES T. MCDERMOTT, Jr.,  
*Executive Director*

[Pa.B. Doc. No. 05-1971. Filed for public inspection October 21, 2005, 9:00 a.m.]

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### Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #05-103.3, Plumbing Investigation and Repairs, PRPA Facilities, until 2 p.m. on Thursday, November 17, 2005. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Avenue, 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available November 1, 2005. The cost of the bid document is \$35 (includes 7% Pennsylvania Sales Tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal opportunity laws and regulations. Bidders must provide to the Procurement Department in writing the names of individuals that will be attending prebid meetings. The information is needed 24 hours prior to the meeting. Fax to (215) 426-2600, Attn: Procurement Department.

A mandatory prebid job site meeting will be held on November 10, 2005, at 10 a.m. at the Tioga Administration Building, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134.

JAMES T. MCDERMOTT, Jr.,  
*Executive Director*

[Pa.B. Doc. No. 05-1972. Filed for public inspection October 21, 2005, 9:00 a.m.]

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### Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept faxed bids for Project #05-104.P, Driver Training for CDL, until 2 p.m. on Tuesday, November 1, 2005. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available October 25, 2005. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal employment opportunity laws and regulations.

JAMES T. MCDERMOTT, Jr.,  
*Executive Director*

[Pa.B. Doc. No. 05-1973. Filed for public inspection October 21, 2005, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:

The payment date specified in the contract.

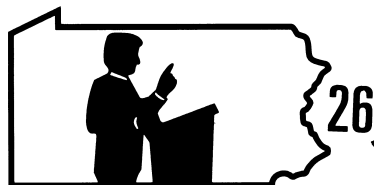
30 days after the later of the receipt of a proper invoice or receipt of goods or services.

The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center  
PA Department of Community and Economic Development  
374 Forum Building  
Harrisburg, PA 17120  
800-280-3801 or (717) 783-5700

### Reader's Guide



Legal Services & Consultation

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services  
Location: Harrisburg, Pa.  
Duration: 12/1/93-12/30/93  
Contact: Procurement Division  
787-0000

③ Contract Information

④ Department

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:  
Vendor Services Section  
717-787-2199 or 717-787-4705

### REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

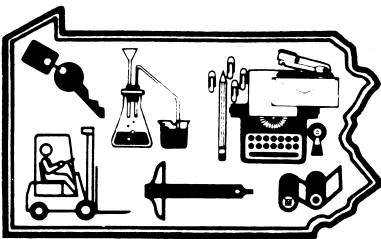
(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

## DO BUSINESS WITH STATE AGENCIES

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. The bureau is, by law, the central repository for all state contracts over \$5,000. Contract Specialists can supply you with descriptions of contracts, names of previous bidders, pricing breakdowns and other information. They can also direct you to the appropriate person and agency looking for your product or service. Copies of state contracts are also available. (Duplicating and mailing costs may apply). For more information, visit us online at [www.patreasury.org](http://www.patreasury.org).

Contact: **Bureau of Contracts and Public Records**  
 Pennsylvania Treasury Department  
 201 Finance Building  
 Harrisburg, PA 17120  
 Phone: (717) 787-2990 or 1-800-252-4700  
 Fax: (717) 772-0977

ROBERT P. CASEY, Jr.,  
*State Treasurer*



### Commodities

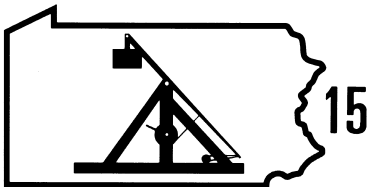
**COSTARS-2** Office Furniture. BID OPENING DATE: 11/15/05 @ 1:30 PM

**Department:** General Services  
**Location:** Various Local Public Procurement Units within the Commonwealth of PA  
**Contact:** Ray Cunningham, 717-787-5427

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## SERVICES

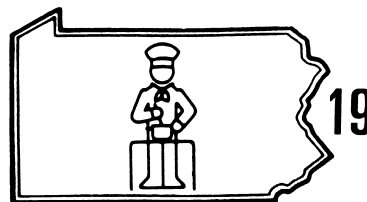
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### Environmental Maintenance Service

**OSM 17(7163)101.1** Abandoned Mine Land Reclamation Project, McDowell Mountain South. The principal items of work and approximate quantities include 770,000 cubic yards of Grading, 2,450 cubic yards of Ditch Excavation, 1,625 square yards of Rock Lining with Filter Material, 56 acres of Seeding, and Implementation of Erosion and Sediment Pollution Control Plan. This project issues on October 21, 2005 and bids will be opened on November 15, 2005 at 2:00 p.m. Bid documents cost \$10.00 per set and will not be mailed until payment has been received. Funding for this project has been made available from the \$21.2 million for Pennsylvania's 2005 AML Grant.

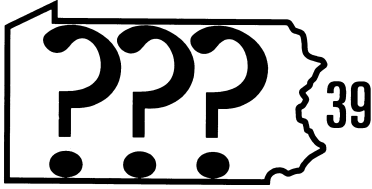
**Department:** Environmental Protection  
**Location:** Bradford Township, Clearfield County  
**Duration:** 360 calendar days after the official starting date.  
**Contact:** Construction Contracts Section, 717-787-7820



### Food

**CN00017075** Non-Bulk Milk and Cream Products: Fax to 814-255-8370 or e-mail, company name, address, telephone number, and PA State Vendor Number to receive Request for Quote-Invitation for Bid for individual packaged milk and cream products.

**Department:** Labor and Industry  
**Location:** OVR-Hiram G. Andrews Center, 727 Goucher Street, Johnstown, PA 15905  
**Duration:** 01-04-06 through 12-29-06  
**Contact:** Ken Zakraysek, Purchasing Agent, 814-255-8210



## Miscellaneous

**10-05-2005** Allentown State Hospital is interested in obtaining a Mohawk Twin Post Lift With Power Station and Life Weight Gauge. Pricing will also include installation. Information can be obtained by contacting the Purchasing Department at 610-740-3425 or Fax at 610-740-3424.

**Department:** Public Welfare  
**Duration:** until 6/30/06  
**Contact:** Robert Mitchell, 610-740-3425

**8425** Mattress pads and washcloths for use at Ebensburg Center. Please submit bid information to: Ebensburg Center, Rt 22 West, PO Box 600, Ebensburg, PA 15931.

**Department:** Public Welfare  
**Location:** Ebensburg Center, 4501 Admiral Peary Highway, Rt 22 West, PO Box 600, Ebensburg, PA 15931  
**Contact:** Marilyn Cartwright, Purchasing Agent, 814-472-0259

**RFP No. 1939049/53/305** The Department of State, Bureau of Finance and Operations on behalf of the Bureau of Professional and Occupational Affairs wishes to procure the services of a qualified records retrieval and document formatting/organizing service to secure the delivery of records to facilitate and review and/or prosecution of licensees under the Medical Practice Act, the Osteopathic Medical Act and the Mcare Act.

**Department:** State  
**Location:** Bureau of Finance and Operations, Room 308 North Office Building, Harrisburg, PA 17120  
**Duration:** Five-year fixed, firm price contract with two one-year options to renew.  
**Contact:** Monna J. Accurti, 717-214-4927

**RFP WC 844** West Chester University of Pennsylvania of the State System of Higher Education is seeking proposals from firms who can provide an assessment of the University's Grounds Maintenance organization and operation including grounds maintenance services provided and the development of a detailed future work plan. The purpose of the consulting services provided shall be to assist the University in establishing a program to ensure high quality, reasonable cost and sound management control of grounds maintenance, heavy equipment, recycling and trash operations and to establish maintainable goals to improve efficiency enabling University administrators to evaluate future progress.

**Department:** State System of Higher Education  
**Location:** West Chester University of Pennsylvania, West Chester, PA 19383.  
**Duration:** Questions are due by the close of business, October 13, 2005. Proposals are due October 20, 2005 at 2 pm. Award anticipated within 30 days.  
**Contact:** Barb Cooper, Contract Specialist, 610-436-2706

[Pa.B. Doc. No. 05-1974. Filed for public inspection October 21, 2005, 9:00 a.m.]



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## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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JAMES P. CREEDON,  
*Secretary*

# PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CH. 439]

## Junket Enterprises

The Pennsylvania Gaming Control Board (Board), under authority in 4 Pa.C.S. § 1202 (relating to general and specific powers), has drafted temporary regulations to facilitate the prompt implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2005 (P. L. 572, No. 71). Included in this draft are regulations pertaining to the licensure of junket enterprises and the registration of junket representatives. Upon adoption of the regulations by the Board, the Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). By publishing these regulations in draft form, the Board seeks public comment prior to the adoption of the regulations.

### Contact Person

Interested persons are invited to submit written comments, suggestions or objections to the draft temporary regulations to the Pennsylvania Gaming Control Board, Office of Communications, P. O. Box 69060, Harrisburg, PA 17106-9060, Attn: Public Comment. The public comment period will end on Monday, November 7, 2005.

THOMAS A. DECKER,  
*Chairperson*

### Annex A

#### TITLE 58. RECREATION

#### PART VII. GAMING CONTROL BOARD

#### Subpart B. LICENSING, REGISTERING AND PERMITTING

#### CHAPTER 439. JUNKET ENTERPRISES

Sec.	
439.1.	Definitions.
439.2.	Junket enterprise license requirements.
439.3.	Junket Enterprise License Form.
439.4.	Junket representatives.
439.5.	Junket Enterprise Representative Registration.
439.6.	Junket schedules.
439.7.	Junket arrival report.
439.8.	Junket final report.
439.9.	Monthly junket report.
439.10.	Purchase of patron lists.
439.11.	Junket prohibitions.

#### § 439.1. Definitions.

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

*Compensation*—Any form of remuneration whatsoever, including:

- (i) The payment of cash.
- (ii) The forgiveness or forbearance of a debt.
- (iii) The direct or indirect provision of a product, service or item without charge or for less than full value.

*Complimentary accommodations*—

- (i) A hotel accommodation provided to a person at no cost, or at a reduced price not generally available to the public under similar circumstances.

- (ii) The term includes any hotel room provided to a person at a reduced price due to the anticipated or actual gaming activities of that person.

*Complimentary service or item*—A service or item provided directly or indirectly by a slot machine licensee at no cost or at a reduced price.

*Junket*—

- (i) An arrangement made between a slot machine licensee and a junket enterprise or its junket representative, the purpose of which is to induce any person, selected or approved, to come to a licensed facility for the purpose of gambling and pursuant to which, and as consideration for which, any or all of the cost of transportation, food, lodging and entertainment for that person is directly or indirectly paid by a slot machine licensee. The person shall be selected or approved on the basis of one or more of the following:

(A) The ability to satisfy a financial qualification obligation related to the person's ability or willingness to gamble, which shall be deemed to occur whenever a person, as an element of the arrangement is required to perform one or more of the following:

(I) Establish a customer deposit with a slot machine licensee.

(II) Demonstrate to a slot machine licensee the availability of a specified amount of cash or cash equivalent.

(III) Gamble to a predetermined level at the licensed facility.

(IV) Comply with any similar obligation.

(B) The propensity to gamble, which shall be deemed to occur whenever that person has been selected or approved on the basis of one or more of the following:

(I) The previous satisfaction of a financial qualification obligation in accordance with clause (A).

(II) An evaluation that the person has a tendency to participate in gambling activities as the result of:

(-a-) An inquiry concerning the person's tendency to gamble.

(-b-) Use of other means of determining that the person has a tendency to participate in gambling activities.

(ii) A rebuttable presumption that a person has been selected or approved for participation in an arrangement on a basis related to the person's propensity to gamble shall be created whenever the person is provided with one or more of the following:

(A) Complimentary accommodations as part of the arrangement.

(B) Complimentary food, entertainment or transportation which has a value of \$200 or more.

*Junket enterprise*—A person, other than a slot machine licensee, who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed facility, regardless of whether or not the activities occur within this Commonwealth.

*Junket representative*—

- (i) A natural person who negotiates the terms of, engages in the referral, procurement or selection of

persons who may participate in any junket to a licensed facility, regardless of whether or not those activities occur within this Commonwealth.

(ii) A gaming employee of a slot machine licensee who performs the duties and functions listed in subparagraph (i) for the licensed facility is not a junket representative.

**§ 439.2. Junket enterprise license requirements.**

(a) Each slot machine licensee shall file a Junket Enterprise License Form with the Board to conduct business with a junket enterprise.

(b) Junket Enterprise License Forms shall be submitted by a slot machine licensee or applicant with a verification provided by the slot machine licensee or applicant that the junket enterprise's services will be utilized at the licensed facility.

(c) A junket enterprise shall be licensed as a junket enterprise prior to a slot machine licensee permitting a junket involving that junket enterprise to arrive at its licensed facility. A junket enterprise shall be considered "involved" in a junket to a licensed facility if it receives any compensation whatsoever from any person as a result of the conduct of the junket. A slot machine licensee may not engage the services of any junket enterprise which has not been licensed.

**§ 439.3. Junket Enterprise License Form.**

A JELF shall consist of an application processing fee and shall be in a format prescribed by the Board requesting the following information:

- (1) Any official or trade name used.
- (2) Current and former business addresses.
- (3) Telephone number.
- (4) The location of the applicant's business, a description of the type of junket services to be provided, a description of the geographic area from which the junkets will originate and the name of the slot machine licensees or applicants to which junkets will be provided.
- (5) Federal Employer Identification Number/Tax Identification Number.
- (6) Whether the junket enterprise is minority- or women-owned and controlled and the junket enterprise certification number, under Chapter 481 (relating to general provisions).
- (7) The form of business and a copy of the certificate of incorporation, charter, by-laws, partnership agreement, trust agreement or other basic documentation of the junket enterprise.
- (8) The date on which a formal acceptance of the agreement to conduct business with a slot machine licensee or applicant occurred and a copy of the agreement or in the absence of a written agreement, a description thereof, including the expected duration and compensation.
- (9) Names and addresses of all subsidiaries.
- (10) Whether the applicant has had any registration, license, permit or certificate granted, denied, suspended, conditioned or revoked by any government agency in this Commonwealth or any other jurisdiction, the nature of the registration, license, permit or certificate, the agency and its location, the date of the action and the facts related thereto.
- (11) The names, addresses, title or position, date of birth and information concerning any gaming licenses,

registrations or permits previously or currently applied for in any jurisdiction, for each of the following:

(i) Any individual who entered into the agreement with or will deal directly with the slot machine licensee or applicant, including junket representatives; the immediate supervisors of the persons; and all persons responsible for the office out of which the junket representatives and supervisors work.

(ii) Any officer, partner or director who will be involved in the conduct of the junket business with the slot machine licensee or applicant.

(iii) If the junket enterprise is a sole proprietorship, the sole proprietor.

(iv) Each beneficial owner of more than 5% of the junket enterprise and the percentage of that ownership.

(12) The name, address and percentage of ownership of each entity directly owning more than 5% of the junket enterprise or its business.

(13) A Junket Enterprise License Form for the applicant and any key employee qualifier that is an entity, and for each affiliate, intermediary, subsidiary and holding company of the applicant.

(14) A Junket Enterprise Representative Registration for each junket representative, key employee qualifier who is a natural person and key employee.

(15) The applicant's Federal tax returns and related documents for the 3 years, State tax returns, when appropriate and related documents for the 1 year preceding application.

(16) Information regarding any judgments or petitions for bankruptcy or insolvency and relief sought under provisions of the Federal Bankruptcy Act or any State insolvency law.

(17) Information regarding any civil, criminal, administrative and investigatory proceedings relating to the applicant and its key employees and key employee qualifiers.

(18) A diversity plan as set forth in section 1325(b) of the act (relating to license or permit issuance) and Chapter 481, signed by the chief executive officer of the applicant.

(19) The name, position or title and signature of the individual who supplied the information in the Junket Enterprise License Form.

(20) Properly executed forms for consents to inspections, searches and seizures; waivers of liability for disclosures of information and consents to examination of accounts and records in forms as prescribed by the Board.

(21) Additional information requested by the Board.

**§ 439.4. Junket representatives.**

(a) A person may not act as a junket representative in connection with a junket to a licensed facility unless the person has been registered as a junket representative and is employed by a junket enterprise that has been licensed by the Board.

(b) A junket representative may only be employed by one junket enterprise at a time. For the purposes of this section, to qualify as an employee of a junket enterprise, a junket representative shall:

- (1) Receive all compensation for services as a junket representative within this Commonwealth through the payroll account of the junket enterprise.

(2) Exhibit all other appropriate indicia of genuine employment, including Federal and State taxation withholdings.

(c) A junket enterprise may not employ or otherwise engage the services of a junket representative except in accordance with this section.

**§ 439.5. Junket Enterprise Representative Registration.**

(a) Junket enterprise representatives shall register with the Board.

(b) An application for a Junket Enterprise Representative Registration must be on a form prescribed by the Board and include the following:

(1) The name and address of the individual, to include the home address and residence history and all business addresses.

(2) Daytime and evening telephone numbers.

(3) Date of birth.

(4) Physical description of the applicant.

(5) Social Security number.

(6) Citizenship, and, if applicable, resident alien status, including employment authorization.

(7) Marital status.

(8) Military history.

(9) Employment history, including gaming-related employment and contact information for prior employers.

(10) Education history.

(11) Family and marital history, including any current court orders relating to alimony, spousal support or child support.

(12) Credit history.

(13) History of insurance claims relating to the business activities of the applicant.

(14) Information relating to any health-related issues involving alcohol or controlled substances.

(15) A list of at least five references, to include contact information for each.

(16) Verification of the applicant's employment or an offer of employment from a junket enterprise.

(17) A description of the employment responsibilities of the individual and their relationship to the junket enterprise and of all education, training and experience that qualifies the individual for the position.

(18) A signed, dated and notarized release authorization necessary to obtain information from governmental agencies and other institutions about the applicant.

(19) A description of the individual's criminal history records information and arrests or criminal charges brought against the individual.

(20) A photograph that meets the requirements prescribed by the Board.

(21) A set of fingerprints taken by the Pennsylvania State Police or a criminal justice agency designated by the Pennsylvania State Police and transmitted to the Pennsylvania State Police.

(22) A list of civil judgments consistent with section 1310(b) of the act (relating to slot machine license application character requirements).

(23) Details relating to any similar licenses obtained in other jurisdictions.

(24) A tax clearance and lien review from the Department.

(25) A nonrefundable application processing fee.

(26) Additional information requested by the Board.

(c) In addition to the information under subsection (b), the Board may require letters of reference from law enforcement agencies under section 1310(b) of the act.

(d) After review of the information submitted under subsections (b) and (c), including a background investigation, the Board may issue a Junket Enterprise Representative Registration if the individual has proven that he is a person of good character, honesty and integrity and is qualified to hold a Junket Enterprise Representative Registration.

(e) An individual who wishes to receive a Junket Enterprise Representative Registration under this chapter may provide the junket enterprise with written authorization to file the application on the individual's behalf.

(f) A Junket Enterprise Representative Registration issued under this section shall be nontransferable.

(g) The Board may issue, renew or deny a Junket Enterprise Representative Registration under this section, consistent with 18 Pa.C.S. § 9124 (relating to use of records by licensing agencies).

(1) If the Board provides an individual with the opportunity to demonstrate rehabilitation, the individual shall provide certification from the Board of Probation and Parole or the county probation and parole office, whichever is applicable, that all obligations for restitution, fines and penalties have been met.

(i) The Board will provide notice to the district attorney of the individual's county of residence of the individual's request for a determination of rehabilitation.

(ii) The district attorney shall have 15 days from receipt of the notice to provide input into the determination.

(2) For an individual with out-of-State convictions, if the Board provides the individual with the opportunity to demonstrate rehabilitation, the individual shall provide certification from the equivalent State or county board of probation or parole, whichever is applicable that all obligations for restitution, fines and penalties have been met.

(i) The Board will provide notice to the district attorney or equivalent thereof of the individual's place of residence of the individual's request for a determination of rehabilitation.

(ii) The district attorney shall have 15 days from receipt of the notice to provide input into the determination.

(h) Nothing in subsection (g) will be construed to authorize the issuance of a Junket Enterprise Representative Registration to an applicant who has been convicted of an offense under 18 Pa.C.S. (relating to crimes and offenses) or the criminal laws of any other jurisdiction which conviction indicates that the issuance of the Junket Enterprise Representative Registration to the applicant would be inimical to the public policy of the act or this part.

**§ 439.6. Junket schedules.**

(a) A junket schedule shall be prepared by a slot machine licensee for each junket that is arranged through a junket enterprise or its junket representative.

(b) A junket schedule shall be filed with the Board's Bureau of Regulatory Compliance by the slot machine licensee by the 15th day of the month preceding the month in which the junket is scheduled. If a junket for which a junket schedule is required by subsection (a) is arranged after the 15th day of the month preceding the arrival of the junket, an amended junket schedule shall be immediately filed with the Bureau of Regulatory Compliance by the slot machine licensee.

(c) Junket schedules shall be certified by an employee of the slot machine licensee and include:

- (1) The origin of the junket.
- (2) The number of participants in the junket.
- (3) The arrival time and date of the junket.
- (4) The departure time and date of the junket.

(5) The name and registration number of all junket representatives and the name and vendor license number of all junket enterprises involved in the junket.

(d) Any change in the information which occurs after the filing of a junket schedule or amended junket schedule with the Bureau of Regulatory Compliance shall be immediately reported in writing to the Bureau of Regulatory Compliance by the slot machine licensee. These changes, plus any other material change in the information provided in a Junket Schedule, shall also be noted on the arrival report.

(e) Filings required by this section shall be made at locations to be designated by the Bureau of Regulatory Compliance.

**§ 439.7. Junket arrival report.**

(a) A junket arrival report shall be prepared by a slot machine licensee for each junket arranged through a junket enterprise or its junket representative with whom the slot machine licensee does business, which involves one of the following:

- (1) A junket enterprise.
- (2) An offer of complimentary services or items which have a value in excess of \$200 per participant.
- (3) Complimentary accommodations.

(b) Junket arrival reports shall be maintained by the slot machine licensee on the premises of its licensed facility in compliance with the following:

(1) A junket arrival report involving complimentary accommodations shall be prepared within 12 hours of the arrival of the junket participant.

(2) A junket arrival report prepared under subsection (a)(1) or (2) shall be filed by 5 p.m. of the next calendar business day following arrival. A junket arrival which occurs after 12 a.m. but before the end of the gaming day shall be deemed to have occurred on the preceding calendar day. For the purposes of this section, a business day shall be defined as any day except a Saturday, Sunday or State and Federal holiday.

(c) Junket arrival reports shall be certified by an employee of the slot machine licensee and include:

(1) A junket guest manifest listing the names and addresses of junket participants.

(2) Information required which has not been previously provided to the Bureau of Regulatory Compliance in a junket schedule pertaining to that particular junket, or an amendment thereto.

**§ 439.8. Junket final reports.**

(a) A final report shall be prepared by a slot machine licensee for each junket for which the slot machine licensee was required to prepare either a junket schedule or a junket arrival report.

(b) A final report shall be placed in its files within 7 days of the completion of the junket.

(c) A final report shall include:

- (1) The actual amount of complimentary services and items provided to each junket participant.
- (2) Additional information requested by the Board.

**§ 437.9. Monthly junket report.**

Each slot machine licensee shall, on or before the 15th day of the month, prepare and file with the Board a monthly junket report listing the name and registration number of each person who performed the services of a junket representative during the preceding month. The report shall be maintained by the slot machine licensee on the premises of its licensed facility and made available to the Bureau of Regulatory Compliance for inspection.

**§ 437.10. Purchase of patron lists.**

(a) Each slot machine licensee, junket representative and junket enterprise shall prepare and maintain a report with respect to each list of names of junket patrons or potential junket patrons purchased from or for which compensation was provided to any source whatsoever.

(b) The report required under subsection (a) must include:

- (1) The name and address of the person or enterprise selling the list.
- (2) The purchase price paid for the list or any other terms of compensation related to the transaction.
- (3) The date of purchase of the list.

(c) The report required under subsection (a) shall be filed as soon as is practicable at a location to be designated by the Bureau of Regulatory Compliance, but may not be filed later than 7 days after the receipt of the list by the purchaser.

**§ 439.11. Junket prohibitions.**

A junket enterprise or junket representative may not:

- (1) Engage in collection efforts.
- (2) Individually receive or retain any fee from a patron for the privilege of participating in a junket.

(3) Pay for any services, including transportation or other items of value, provided to or for the benefit of any patron participating in a junket, unless otherwise disclosed to and approved by the Board.

(4) Extend credit to or on behalf of any patron participating in a junket.

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**Statement of Ownership, Management, and Circulation**

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Publisher (Name and complete mailing address) Mary Jane Phelps, Director Pennsylvania Bulletin (same as above)				
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10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)

Full Name	Complete Mailing Address
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Legislative Reference Bureau	Legislative Reference Bureau
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e. Free Distribution Outside the Mail (Carriers or other means)		0	0
f. Total Free Distribution (Sum of 15d. and 15e.)		0	0
g. Total Distribution (Sum of 15c. and 15f.)		5970	6037
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 Signature: *Barbara Furjanic* Title: **EDITOR** Date: October 18, 2005

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