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PENNSYLVANIA BULLETIN

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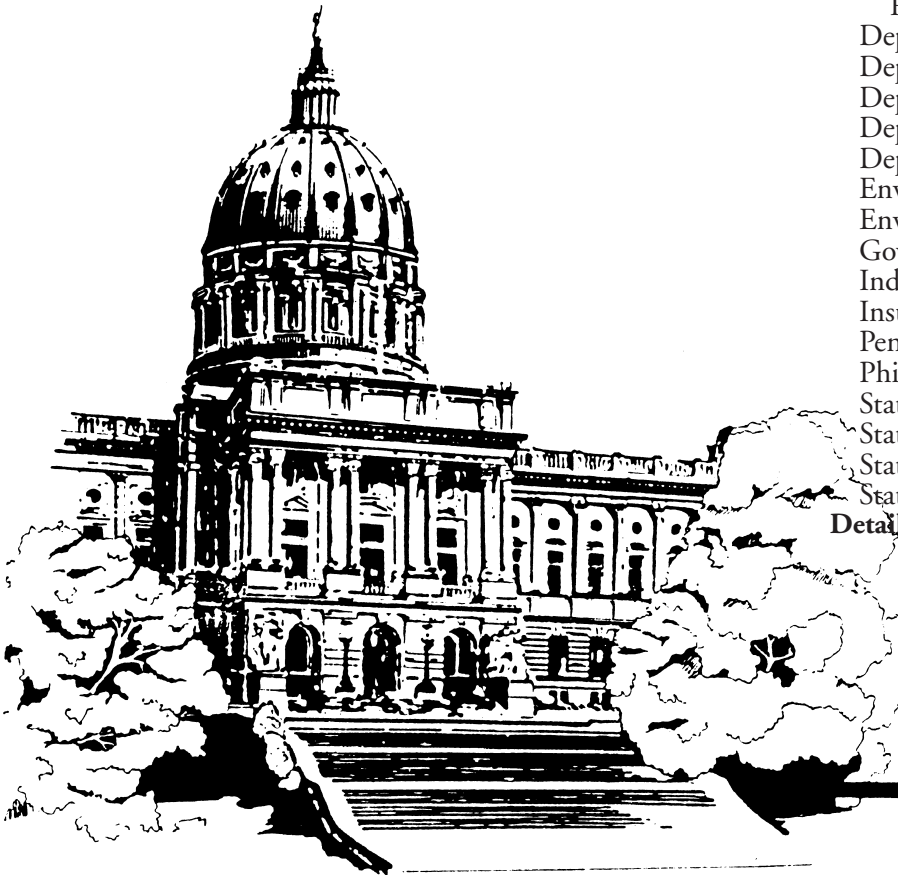
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No. 433, December 2010

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Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

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

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

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THE GENERAL ASSEMBLY

Recent Actions during the 2010 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2010 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>
2010 GENERAL ACTS OF REGULAR SESSION ENACTED—ACT 103 through 126					
103	Nov 18	HB2614	PN4228	60 days	Senator Jim Rhoades Memorial Bridge—designation
104	Nov 17	HB0101	PN4389	Immediately*	Public School Code of 1949—omnibus amendments
105	Nov 23	HB0060	PN3975	90 days	Housing Finance Agency Law—Pennsylvania Housing Affordability and Rehabilitation Enhancement Program, establishing Housing Affordability and Rehabilitation Enhancement Fund
106	Nov 23	HB0174	PN4473	60 days	Agriculture Code (3 Pa.C.S.)—codifying Public Eating and Drinking Place Law and the Food Act, protection of public health and regulations, licensing, organic foods, maple products, food employee certification and farmers' market
107	Nov 23	HB0196	PN0195	60 days	Controlled Substance, Drug, Device and Cosmetic Act—prohibited acts and penalties
108	Nov 23	HB0708	PN4465	60 days	Covered Device Recycling Act—enactment
109	Nov 23	HB1394	PN4467	Immediately	Pennsylvania Farmland and Forest Land Assessment Act of 1974—split-off, separation or transfer of land, penalty for ineligible use, removal of land from preferential assessment
110	Nov 23	HB1482	PN4370	60 days*	Health Care Facilities Act—photo identification tag regulations
111	Nov 23	HB1609	PN2269	60 days	Pennsylvania Municipalities Planning Code—municipalities' powers, traditional neighborhood development designations, written and graphic design guideline manuals, ordinance provisions for traditional neighborhood development
112	Nov 23	HB1639	PN4468	60 days	Domestic Relations Code (23 Pa.C.S.) and Judicial Code (42 Pa.C.S.)—contempt for noncompliance with visitation or partial custody order and child custody
113	Nov 23	HB2139	PN4267	60 days	Pennsylvania Agricultural Surplus System Act—enactment
114	Nov 23	HB2172	PN4432	60 days	Judicial Code (42 Pa.C.S.)—courts of common pleas judges, jurisdiction and venue of Philadelphia Municipal Court and magisterial district judges
115	Nov 23	HB2258	PN3849	60 days	Judicial Code (42 Pa.C.S.)—juvenile matters and disposition of dependent child
116	Nov 23	HB2273	PN3704	60 days	Agriculture Code (3 Pa.C.S.)—domestic animals, further providing for application
117	Nov 23	HB2275	PN4445	Immediately	Multiple conveyances
118	Nov 23	HB2321	PN4469	60 days*	Amusements (4 Pa.C.S.) and Crimes Code (18 Pa.C.S.) and Health and Safety (35 Pa.C.S.)—omnibus amendments
119	Nov 23	HB2338	PN3593	120 days	Children in Foster Care Act—enactment
120	Nov 23	HB2497	PN4476	Immediately*	Education (24 Pa.C.S.) and State Government (71 Pa.C.S.)—omnibus amendments

<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>
121	Nov 23	HB2521	PN4290	60 days	Anatomic Pathology Service Disclosure Act—enactment
122	Nov 23	HB2547	PN3826	Immediately	Banks and Banking (7 Pa.C.S.)—exceptions to license requirements
123	Nov 23	SB0441	PN2281	Immediately	Public School Code of 1949—Disqualifications relating to teacher's certificate, medical examinations of teachers and other persons and attendance in other districts
124	Nov 23	SB0642	PN0697	Immediately*	Sign Language Interpreter and Translator State Registration Act—omnibus amendments
125	Nov 23	SB0906	PN2121	Immediately	Agriculture Code (3 Pa.C.S.) and Crimes Code (18 Pa.C.S.)—keeping and handling of domestic animals, ecoterrorism and criminal trespass
126	Nov 23	SB0976	PN2064	60 days	Pennsylvania Amber Alert System Law—system establishment, prohibited us, coordination with other jurisdictions, immunity and creating Missing Endangered Person Advisory System

2010 VETOES OF REGULAR SESSION OF BILLS—VETO 2 through 6

2	Oct 22	HB101	PN4389	Immediately*	Public School Code of 1929—omnibus amendments
3	Oct 22	SB1280	PN2231	Immediately*	Medical Care Availability and Reduction of Error (Mcare) Act—medical professional liability insurance, Medical Care Availability and Reduction of Error Fund, actuarial data and conflict
4	Nov 27	HB1231	PN4393	Immediately	Workers' Compensation Act—cancer in the occupation of firefighter
5	Nov 27	HB1926	PN4477	Immediately*	Crimes Code (18 Pa.C.S.) and Judicial Code (42 Pa.C.S.)—use of force in protection of self or others, grading of theft offenses, licenses to carry firearms, civil immunity for use of force, registration of sex offenders and failure to comply
6	Nov 27	HB2477	PN4471	Immediately	County Code—omnibus amendments

* denotes an effective date with exceptions

Effective Dates of Statutes

The effective dates specified previously 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 (Department) 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 \$25.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, accompanied by a check or money order in the sum of \$25, payable to the "Commonwealth of Pennsylvania."

ROBERT W. ZECH, Jr.,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 10-2346. Filed for public inspection December 10, 2010, 9:00 a.m.]

THE COURTS

231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 105

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, February 11, 2011 directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635
Fax: 717 231-9531
E-mail: domesticrules@pacourts.us

By the Domestic Relations
Procedural Rules Committee

CAROL A. BEHERS, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.3. Parties. **Obligor. Obligee.**

(a) An action [shall] may be brought

[(a)] (1) by a person, including a minor parent or a minor spouse, to whom a duty of support is owing, or

[(b)] (2) on behalf of a minor child by a person having custody of the child, without appointment as guardian ad litem, or

[(c)] (3) on behalf of a minor child by a person caring for the child regardless of whether a court order has been issued granting that person custody of the child, or

[(d)] (4) by a public body or private agency having an interest in the case, maintenance or assistance of a person to whom a duty of support is owing, or

[(e)] (5) by a parent, guardian or public or private agency on behalf of an unemancipated child over eighteen years of age to whom a duty of support is owing.

(6) by any person who may owe a duty of support to a child or spouse.

(b) The trier of fact shall enter an appropriate support order based upon the evidence presented, without regard to which party initiated the support action or filed a modification petition. The determination of which party will be the obligee and which will be the obligor will be made by the trier of fact based upon the respective incomes of the parties and the custodial arrangements at the time of the initial or subsequent conference, hearing or trial. If supported by the evidence, the party named as the defendant in the initial pleading may be deemed to be the obligee, even if that party did not file a complaint for support.

(1) In general, the party who has primary custody of the children shall be the obligee of a child support order.

(2) When the parties share custody of the children equally, the party with the higher income shall be the obligor as provided in Rule 1910.16-4(c)(2).

Explanatory Comment—1999

New subdivision (c) incorporates 23 Pa.C.S. § 4341(b) to confer standing on any person who is caring for a child to seek support on behalf of that child even though there is no court order granting legal or physical custody to that person. The statutory provision effectively overrules *Larson v. Diveglia*, 549 Pa. 118, 700 A.2d 931 (1997), which held to the contrary.

Subdivision (e) is amended to eliminate the requirement of consent when the child is over 18 years of age. This requirement was originally intended only for applicable child support actions for higher educational support, which actions were abolished by *Curtis v. Kline*, 542 Pa. 249, 666 A.2d 265 (1995). This rule also is intended to apply to children who are unemancipated by reason of physical or mental disability, consistent with 23 Pa.C.S. § 4321(3) as interpreted by case law.

Explanatory Comment—2010

A new category has been added in subdivision (a) to allow a party who may not have primary custody of the parties' child or who may owe a duty of support to a spouse to initiate a support action in which an appropriate order may be entered.

A new subdivision (b) has been added to clarify that in all initial and subsequent support actions, the trier of fact may enter a support order against either party, without regard to which party filed the complaint or petition for modification. This facilitates judicial economy, and relieves the parties from incurring additional filing fees, losing time from work or family, losing retroactivity and having to wait for a new proceeding to be scheduled. It enables the trier of fact to base the order on the facts and circumstances at the time of the proceeding, which may be different than at the time of filing.

Rule 1910.5. Complaint. Order of Court.

* * * * *

(c) An order shall be attached at the front of the complaint directing the defendant to appear before an officer for a conference at the time and place directed by the court. The order shall be substantially in the form provided by Rule 1910.27(b) and must include notice that a support order may be entered against either party without regard to which party initiated the action or filed a modification petition.

* * * * *

Rule 1910.17. Support Order. Effective Date. Change of Circumstances. Copies of Order. Priority of Distribution of Payments.

(a) An order of support shall be effective from the date of the filing of the complaint or petition for modification unless the order specifies otherwise. **In a child support case, if a change in custody occurs after the date of filing, but before a domestic relations conference is held, the trier of fact shall enter a charging order going forward in favor of the primary custodian that shall be effective from the date of the change in custody. The trier of fact also may enter a retroactive arrears order in favor of the party who was the primary custodian at the time of filing. Such an order may address the period from the date of filing to the date of the change in custody.** However, a modification of an existing support order may be retroactive to a date preceding the date of filing if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition.

Example: Mother has primary custody of the children and files for child support. Two months later, Father becomes the primary custodian. One month after the change in custody, a support conference is held. Father will be the obligee on a charging order that is retroactive to the date he became the primary custodian. However, an order also may be entered with Mother as the obligee for the two-month period from the date of filing to the date of the change in custody.

Official Note: The order must direct payment to be made payable to or payment to be made to the State Collection and Disbursement Unit for transmission to the obligee. See 23 Pa.C.S. § 4325.

Subdivision (a) was amended in 2005 to include the statutory provision at 23 Pa.C.S.[A.] § 4352(e) that authorizes the court to enter a modified order that is effective to a date prior to the date on which the petition for modification was filed in certain circumstances. To the effect that the holding in *Kelleher v. Bush*, 832 A.2d 483 (Pa. Super. Ct. 2003), is inconsistent, it is superseded. See 23 Pa.C.S.[A.] § 4352(e) for additional provisions. Every order of support must contain an immediate or conditional order for the attachment of income. See Rule 1910.21.

* * * * *

Rule 1910.19. Support. Modification. Termination. Guidelines as Substantial Change in Circumstances.

* * * * *

(b) The procedure upon the petition shall be in accordance with Rule 1910.10 et seq. **After a party has filed a petition for modification, the petition may not be withdrawn unless both parties consent.**

(c) Pursuant to a petition for modification, the trier of fact may modify or terminate the existing support order in any appropriate manner based upon the evidence presented **without regard to which party filed the petition for modification. If the trier of fact finds that there has been a material and substantial change in circumstances, the order may be increased or decreased depending upon the respective incomes of the parties and each party's custodial time with the child at the time the modification petition is heard.**

* * * * *

Rule 1910.27. Form of Complaint. Order. Income Statements and Expense Statements. Health Insurance Coverage Information Form. Form of Support Order. Form Petition for Modification.

* * * * *

(b) The order to be attached at the front of the complaint set forth in subdivision (a) shall be in substantially the following form:

(Caption)

ORDER OF COURT

* * * * *

[THE APPROPRIATE COURT OFFICER MAY ENTER AN ORDER AGAINST EITHER PARTY BASED UPON THE EVIDENCE PRESENTED WITHOUT REGARD TO WHICH PARTY INITIATED THE SUPPORT ACTION.] THE TRIER OF FACT SHALL ENTER AN APPROPRIATE SUPPORT ORDER BASED UPON THE EVIDENCE PRESENTED, WITHOUT REGARD TO WHICH PARTY INITIATED THE SUPPORT ACTION. THE DETERMINATION OF WHICH PARTY WILL BE THE OBLIGEE AND WHICH WILL BE THE OBLIGOR WILL BE MADE BY THE TRIER OF FACT BASED UPON THE RESPECTIVE INCOMES OF THE PARTIES AND THE CUSTODIAL ARRANGEMENTS AT THE TIME OF THE INITIAL OR SUBSEQUENT CONFERENCE, HEARING OR TRIAL. IF SUPPORTED BY THE EVIDENCE, THE PARTY NAMED AS THE DEFENDANT IN THE INITIAL PLEADING MAY BE DEEMED TO BE THE OBLIGEE, EVEN IF THAT PARTY DID NOT FILE A COMPLAINT FOR SUPPORT.

* * * * *

(g) The order to be attached at the front of the petition for modification set forth in subdivision (f) shall be in substantially the following form:

(Caption)

ORDER OF COURT

* * * * *

[THE APPROPRIATE COURT OFFICER MAY MODIFY OR TERMINATE THE EXISTING ORDER IN ANY MANNER BASED UPON THE EVIDENCE PRESENTED.] THE TRIER OF FACT MAY INCREASE, DECREASE OR TERMINATE THE EXISTING ORDER BASED UPON THE EVIDENCE PRESENTED. AN ORDER MAY BE ENTERED AGAINST EITHER PARTY WITHOUT REGARD TO WHICH PARTY FILED THE MODIFICATION PETITION.

* * * * *

[Pa.B. Doc. No. 10-2347. Filed for public inspection December 19, 2010, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 106

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, February 11, 2011 directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
Pennsylvania Judicial Center
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*By the Domestic Relations
Procedural Rules Committee*

CAROL A. BEHERS, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation. Allocation of Additional Expenses.

* * * * *

(b) Health Insurance Premiums.

(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party and/or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it, as long as a statutory duty of support is owed to the party who is paying the premium. If there is no statutory duty of support owed to the party who is paying the premium, the portion attributable to that person must be deducted from the premium as set forth in subdivision (2) below. **Premiums paid by a party to whom no duty of support is owed to cover himself or herself only and that are not necessary to cover the other party or a child as part of a support order shall not be apportioned between the parties.** If health insurance coverage for a child who is the subject of the support proceeding is being provided and paid for by a third party resident of either party's household, the cost shall be allocated between the parties in proportion to their net

incomes. If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

* * * * *

Example 1. If the parties are separated, but not divorced, and Husband pays \$200 per month toward the cost of a health insurance policy provided through his employer which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total of \$80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—\$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S.[A.] § 4321, Wife's percentage share of the \$120 is deducted from Husband's support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

* * * * *

Example 3. The parties are divorced and Mother is the obligee of a child support order. Father, the obligor, pays \$200 per month toward the cost of a health insurance policy provided by his employer that covers himself and the parties' child. Mother pays \$400 per month for her employer-sponsored health insurance that covers only herself. The amount of the premium Father pays to cover the parties' child, \$100 (\$200 premium divided between two covered persons, Father and the child), will be allocated between the parties in proportion to their respective incomes. The portion of the premium that covers Father will not be allocated because the parties are no longer married and he is not owed a duty of support by Mother. The premium Mother pays to provide her own coverage will not be allocated because the parties are no longer married and she is not owed a duty of support by Father.

(3) Pursuant to 23 Pa.C.S.[A.] § 4326(a), in every support proceeding, the court must ascertain each parent's ability to provide medical support for the parties' children and the support "order shall include a requirement for medical support to be provided by either or both parents, provided that such medical support is accessible to the children."

* * * * *

(ii) Unless health care coverage for the parties' children is provided by the obligee or a third party, the court shall issue the National Medical Support Notice required by 23 Pa.C.S.[A.] § 4326(d.1) to the obligor's employer in response to notification that the obligor is employed. The notice shall direct the employer to enroll the children of the obligor who are the subject of the support proceeding if the coverage is available at a reasonable cost to the obligor. However, the notice shall direct that enrollment shall not occur earlier than 25 days from the date of the National Medical Support Notice to allow the obligor time to object. Concurrent with the issuance of the National

Medical Support Notice, the court shall provide notice to the obligor setting forth the process to object to the enrollment based upon unreasonable cost, mistake of fact or availability of alternative health care coverage for the children. If there is more than one employer-provided health care coverage option, the obligor shall select the plan, subject to the obligee's right to seek a court order designating a different option.

* * * * *

Official Note: Subdivision (b) of this rule does not apply to Medical Assistance. See 23 Pa.C.S.[A.] § 4326(1). The 2005 amendments to Rule 1910.16-6(b)(1) and (2) clarify that the portion of the insurance premium covering the party carrying the insurance cannot be allocated between the parties if there is no statutory duty of support owed to that party by the other party. See *Maher v. Maher*, 575 Pa. 181, 835 A.2d 1281 (2003) and 23 Pa.C.S.[A.] § 4321.

* * * * *

[Pa.B. Doc. No. 10-2348. Filed for public inspection December 10, 2010, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 107

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, February 11, 2011 directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
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E-mail: domesticrules@pacourts.us

By the Domestic Relations
Procedural Rules Committee

CAROL A. BEHERS, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-3.1. Support Guidelines. High Income Cases.

(a) *Child Support Formula.* When the parties' combined monthly net income is above \$30,000, the following three-step process shall be applied to calculate the parties' respective child support obligations. The amount of support calculated pursuant to this three-step process shall in no event be less than the amount of support that would have been awarded if the parties' combined net monthly income were \$30,000. That amount shall be a presumptive minimum.

* * * * *

(2) And second, the trier of fact shall [**make**] apply **Part II and Part III of the formula at Rule 1910.16-4(a), making any applicable adjustments for substantial or shared custody pursuant to Rule 1910.16-4(c) and allocations of additional expenses pursuant to Rule 1910.16-6;**

* * * * *

Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Rule 1910.16-4(c), regarding adjustments to support when the obligor has substantial or shared custody, apply in high income cases. Previously, when high income cases were decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), case law held that because the time and resources each parent provided to a child were factored into the *Melzer* formula, the reductions for substantial or shared parenting time did not apply to cases decided pursuant to *Melzer*. See, e.g., *Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008), *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high income cases, the prohibition against reductions for substantial or shared parenting time in such cases is no longer applicable.

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation. Formula.

* * * * *

(c) *Substantial or Shared Physical Custody.*

(1) When the children spend 40% or more of their time during the year with the obligor, a rebuttable presumption arises that the obligor is entitled to a reduction in the basic support obligation to reflect this time. **This rebuttable presumption also applies in high income cases decided pursuant to Rule 1910.16-3.1.** Except as provided in subsections (2) and (3) below, the reduction shall be calculated pursuant to the formula set forth in Part II of subdivision (a) of this rule. For purposes of this provision, the time spent with the children shall be determined by the number of overnights they spend during the year with the obligor.

* * * * *

(3) [**This subdivision**] **Reductions for substantial or shared custody** shall not apply when the obligor's income falls within the shaded area of the schedule in Rule 1910.16-3 or when the obligee's income is 10% or less of the parties' combined income. **Income equaliza-**

tion, as provided in subparagraph (2) above, applies even if the obligor's income falls within the shaded area of the schedule of basic child support.

* * * * *

[Pa.B. Doc. No. 10-2349. Filed for public inspection December 10, 2010, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Proposed Rule 139

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that new Rule 139 be adopted and prescribed. These proposed modifications address the use of restraints on a juvenile during a court proceeding.

The following Explanatory Report highlights the intent of this Rule. Please note that the Committee's 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 Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Tuesday, January 11, 2011.

*By the Juvenile Court
Procedural Rules Committee*

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 139. Use of Restraints on the Juvenile.

A. Use of Restraints. Restraints, such as handcuffs, chains, shackles, irons, or straitjackets, shall be removed prior to the commencement of a court proceeding unless the requirements of paragraph (B) are met.

B. Exception. Restraints may be used during a court proceeding if the court determines that:

1) they are necessary:

a) to prevent physical harm to the juvenile or another person;

b) to prevent disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or

c) to prevent the juvenile, evidenced by an escape history or other relevant factors, from fleeing the courtroom; and

2) there are no less restrictive alternatives to restraints that will prevent harm, disruptive behavior, or flight.

Comment

The use of any restraints is highly discouraged. The routine use of excessive restraints on juveniles is a practice that is contrary to the philosophy of balanced and restorative justice and undermines the goals of providing, treatment, supervision, and rehabilitation to juveniles. However, there are some circumstances when juveniles need to be restrained to protect themselves and others and to maintain security in the courtroom. See 42 Pa.C.S. § 6301 for purposes of the Juvenile Act.

Pursuant to paragraph (B), only in extreme cases should restraints be used. If a juvenile has a history of disruptive behavior, may present substantial risk of physical harm to any person, including himself or herself, or may flee, the court may order the use of restraints. When ordering the use of restraints, the court is to order the least restrictive type of restraint to prevent the behavior.

Explanatory Report

The purpose of this Rule is to eliminate shackling during a court proceeding in almost every case. Only in the few extreme cases should such restraints be utilized.

The Committee considered this issue in light of the Report from the Interbranch Commission on Juvenile Justice (ICJJ). In the ICJJ's Report, the Commission asked the Juvenile Justice Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency to perform a study to reduce and if possible eliminate shackling in Pennsylvania's juvenile courtrooms. (p. 54 of Report).

The Committee believes it is appropriate to address the use of restraints in the courtroom and to limit the use of such restraints by Rule of Court, especially in those cases where the juvenile does not pose a risk. The Committee wanted to ensure that the routine use of excessive restraints is discouraged because it is contrary to philosophy of balanced and restorative justice and undermines the goals of providing treatment, supervision, and rehabilitation to juveniles. However, there are some circumstances when juveniles should be restrained to protect themselves and others and to maintain security in the courtroom.

Pursuant to paragraph (B)(1), restraints may be used if it is determined that they are necessary to prevent: 1) harm to the juvenile or another person; 2) disruptive courtroom behavior; or 3) the juvenile from fleeing. In all three circumstances, there should be evidence that the juvenile has had a history of such behavior or there are other factors present that make the juvenile very likely to pose a risk.

In addition, paragraph (B)(2) requires the least restrictive restraint to be used if it is determined that restraints are necessary.

It is also important to note that this rule only affects the use of restraints in court proceedings. Sheriffs, probation officers, and other persons providing transportation of juveniles to and from detention facilities, placement facilities, and other locations may be bound by internal procedures and policies, including insurance policies to use restraints during the transportation of juveniles. The use of restraints in those situations is governed by local policies of operation.

[Pa.B. Doc. No. 10-2350. Filed for public inspection December 10, 2010, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 2, 3, 5 AND 6]

Proposed Amendments to Rules 241, 242, 311, 312, 500, 600, 610 and 632

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 241, 242, 311, 312, 500, 600, 610, and 632 be adopted and prescribed. These proposed modifications address the victim's rights to: 1) be notified of a hearing; 2) attend a hearing and offer testimony; and 3) submit a victim-impact statement.

The following Explanatory Report highlights the intent of these Rules. Please note that the Committee's 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 Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Tuesday, January 18, 2011.

By the Juvenile Court
Procedural Rules Committee

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

PART D. PRE-ADJUDICATORY DETENTION

Rule 241. Notice of Detention Hearing.

Notice of the detention hearing, including date, time, place, and purpose, shall be given to:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation officer;
- 5) the attorney for the Commonwealth; [and]
- 6) the victim; and
- 7) any other appropriate persons.

Comment

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt should be made to notify all interested persons.

If a guardian has not been notified, a rehearing is to be ordered under Rule 243 upon submission of an affidavit by the guardian.

Official Note: Rule 241 adopted April 1, 2005, effective October 1, 2005.

Rule 242. Detention Hearing.

A. *Informing juvenile of rights.* Upon commencement of the hearing, the court shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing.*

1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.*

a) All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition.

b) The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

c) *The victim may be present and offer testimony.*

4) **Juvenile's rights.** The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:

a) cross-examine witnesses offered against the juvenile; and

b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

C. **Findings.** The court shall determine whether:

1) there is probable cause that a delinquent act was committed by the juvenile; and

2) detention of the juvenile is warranted.

D. **Filing of petition.** If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

Comment

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

The victim, counsel for the victim, and other persons accompanying the victim for his or her assistance are permitted to attend the detention hearing pursuant to Rule 132. See also 42 Pa.C.S. § 6336 and 18 P.S. § 11.201 et seq.

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. See 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. See Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the juvenile. See Rule 363 for time of service. See Rule 331 for service of the petition. See Rule 330 for petition requirements.

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

Official Note: Rule 242 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART B. INTAKE AND INFORMAL ADJUSTMENT

Rule 311. Intake Conference.

A. **Generally.** The juvenile probation officer may conduct an intake conference to determine what further action, if any, should be taken.

B. **Juvenile probation officer's duties.** Before proceeding with an intake conference, the juvenile probation officer shall:

1) provide a copy of the written allegation to the juvenile, the juvenile's guardian, if present, and the juvenile's attorney, if present; and

2) inform the juvenile and the juvenile's guardian, if present, of the juvenile's rights; and

3) afford the victim the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.

C. **Rescheduling.** If a juvenile fails to appear for an intake conference, the juvenile probation officer may attempt to reschedule the conference.

D. Bench Warrants.

1) If the juvenile fails to appear for an intake conference, the juvenile probation officer may notify the court that the juvenile has failed to appear for the conference.

2) If a judge finds that sufficient notice of the intake conference was given, the judge may issue a bench warrant. The judge may not find notice solely based on first-class mail service.

3) If a bench warrant is issued, the case shall proceed pursuant to Rules 140 and 240.

E. Notice, motion, and hearing.

1) The juvenile probation officer shall provide the attorney for the Commonwealth with notice of the decision resulting from the intake conference.

2) Within a reasonable time of receiving the notice, the attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's action.

3) The court shall conduct a hearing on the motion.

Comment

Under paragraph (A), in making a decision, the juvenile probation officer should balance the interests of the victim and protection of the community, imposition of accountability on the juvenile for offenses committed, and the development of competencies for the juvenile. See 42 Pa.C.S. § 6301. The juvenile probation officer should consult with the victim, the attorney for the Commonwealth, the juvenile, the juvenile's attorney, if present, and the juvenile's guardian to determine how the case should be handled. See Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

For the statutory protections concerning statements made by the juvenile, see 42 Pa.C.S. § 6323(e).

Pursuant to paragraphs (C) and (D), if a juvenile fails to appear for an intake conference, juvenile probation officers should use their discretion in determining whether to reschedule the intake conference or ask the court to issue a bench warrant.

Pursuant to paragraph (D)(2), in determining sufficient notice, the judge may not find notice solely based on first-class mail service. See also Rule 140 (A)(2) and its Comment.

Under paragraph (E), it is anticipated that the attorney for the Commonwealth should consult with the juvenile probation officer before any court action.

Nothing in these rules is intended to confer a right upon any person, not already afforded by law, to attend

an intake conference. **If the attorney for the Commonwealth objects pursuant to paragraph (E)(2), the court is to conduct a hearing on the motion. The victim is to receive notice of the hearing and be afforded the opportunity to submit a victim-impact statement. The victim may also be present and offer testimony at the hearing. See also Rule 132 and the Victim's Bill of Rights, 18 P.S. § 11.201 et seq.**

Official Note: Rule 311 adopted April 1, 2005, effective October 1, 2005[; amended]. Amended September 30, 2009, effective January 1, 2010.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 311 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 311 with the Court's Order at 39 Pa.B. 6033 (October 17, 2009).

Rule 312. Informal Adjustment.

A. *Participation.* At any time prior to the filing of a petition, the juvenile probation officer may informally adjust the allegation(s) if it appears:

- 1) an adjudication would not be in the best interest of the public and the juvenile;
- 2) the juvenile and the juvenile's guardian consent to informal adjustment with knowledge that consent is not obligatory; and
- 3) the admitted facts bring the case within the jurisdiction of the court.

B. *Completion.*

- 1) If the juvenile successfully completes the informal adjustment, the case shall be dismissed and prosecution is barred.
- 2) If the juvenile does not successfully complete the informal adjustment, a petition shall be filed.

Comment

Pursuant to paragraph (A), informal adjustments may not occur after the filing of a petition. *See* Rule 800 (12), which suspends 42 Pa.C.S. § 6323(a) only to the extent that it conflicts with this rule. *See also Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000).

The juvenile probation officer or other agencies may give "counsel and advice" as to the informal adjustment. *See* 42 Pa.C.S. § 6323(b). "Counsel and advice" may include referral to a social service agency or other conditions as agreed to by the juvenile probation officer and the juvenile.

A juvenile's participation in an informal adjustment may not exceed six months, unless extended by order of the court for an additional period not to exceed three months. *See* 42 Pa.C.S. § 6323(c). Any incriminating statements made by the juvenile to the juvenile probation officer and in the discussions or conferences incident thereto are not to be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act. *See* 42 Pa.C.S. § 6323(e).

Prior to informally adjusting the written allegation, the juvenile probation officer is to give the victim an opportunity to comment **and to submit a victim-impact statement if the victim so chooses. [In addition] The juvenile probation officer is to include any payment of restitution determined to be owed to the victim**

as a condition of successful completion of an informal adjustment by a juvenile. If the victim is not present, the victim is to be notified of the final outcome of the hearing. *See* Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

If a petition is filed because the juvenile has not successfully completed the requirements of an informal adjustment, the procedures of Rule 330 are to be followed.

Official Note: Rule 312 adopted April 1, 2005, effective October 1, 2005. Amended February 12, 2010, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 312 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 312 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).

CHAPTER 5. DISPOSITIONAL HEARING

PART A. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING

Rule 500. Summons and Notice of the Dispositional Hearing.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the dispositional hearing.

B. *Notice.* **[The court shall give notice] Notice of the dispositional hearing shall be given to:**

- 1) the attorney for the Commonwealth;
- 2) **the victim;**
- 3) the juvenile's attorney; and
- [3] 4) the juvenile probation office.**

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. *See* Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

Other persons may be subpoenaed to appear for the hearing. *See* 42 Pa.C.S. § 6333.

Official Note: Rule 500 adopted April 1, 2005, effective October 1, 2005.

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART A. SUMMONS AND NOTICE

Rule 600. Summons and Notice of the Commitment Review, Dispositional Review, and Probation Revocation Hearing.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the commitment review, dispositional review, or probation revocation hearing.

B. *Notice.* **[The court shall give notice] Notice of the hearing shall be given to:**

- 1) the attorney for the Commonwealth;
- 2) **the victim**;
- 3) the juvenile's attorney; and
- [3] 4) the juvenile probation office; and
- [4] 5) the placement facility staff, if the juvenile is in placement.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. *See* Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

Other persons may be subpoenaed to appear for the hearing. *See* 42 Pa.C.S. § 6333.

Official Note: Rule 600 adopted April 1, 2005, effective October 1, 2005.

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

Rule 610. Dispositional and Commitment Review.

A. *Dispositional Review Hearing.*

- 1) A court may schedule a review hearing at any time.
- 2) In all cases when the juvenile is removed from the home, the court shall hold dispositional review hearings at least every six months.

B. *Change in dispositional order.* Whenever there is a request for a change in the dispositional order, other than a motion to revoke probation as provided in Rule 612, **[the court shall give] notice and an opportunity to be heard shall be given to the parties and the victim [notice of the request and an opportunity to be heard]**.

- 1) The juvenile may be detained pending a court hearing.
- 2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.
- 3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.
- 4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

C. *Advanced Communication Technology.* If the parties agree, commitment and dispositional review hearings may be held by teleconferencing, two-way simultaneous audio-visual communication, or another similar method when a juvenile is committed to a placement facility. The juvenile shall be permitted to communicate fully and confidentially with the juvenile's attorney immediately prior to and during the proceeding.

Comment

Under paragraph (A), the court may hold a review hearing at any time; however, if the juvenile is removed from the home, the court is to conduct a hearing at least every six months. *See* Rule 800.

Nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing, when a juvenile is in a placement facility, to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005; amended December 30, 2005, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 610 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the revisions of Rule 610 published with the Court's Order at 36 Pa.B. 187 (January 14, 2006).

Rule 632. Early Termination of Court Supervision by Motion.

A. *Motion.* Any party may move for early termination of court supervision. The motion shall state with specificity why early termination is sought and why the requirements of Rule 631(A) have not been met.

B. *Notice.* In addition to the service requirements of Rule 345, any party moving for early termination shall serve the motion on the juvenile probation officer **and the other party**.

C. *Objection.*

1) A party, **victim**, or the juvenile probation officer may object to the motion under paragraph (A) and request a hearing.

2) Such objection shall be made within thirty days of receipt of the motion; otherwise, objections are deemed waived.

3) **The court shall make a determination as to whether it will schedule a hearing on the objections or make findings without a hearing.**

D. *Hearing.* If objections have been made pursuant to paragraph (C) **and the court has determined a hearing is necessary**, the court shall hold a hearing and give each party, **the victim**, and the juvenile probation officer an opportunity to be heard before the court enters its final order.

E. *Court's motion.* The court, *sua sponte*, may schedule a hearing for early termination of court supervision **[upon a request by the juvenile probation officer]**. All parties shall receive notice of the hearing.

F. *Termination.* When the requirements of paragraphs (A) through (D) have been met or pursuant to its own motion under paragraph (E) and the court is satisfied that there are compelling reasons to discharge the juvenile prior to the completion of the requirements of Rule 631(A), the court may order an early discharge of the juvenile from its supervision.

Comment

If a party is moving for early termination of court supervision of a juvenile pursuant to paragraph

(A), or the court, *sua sponte*, has scheduled a hearing pursuant to paragraph (E), the victim of the offense is to be notified, by the attorney for the Commonwealth or the juvenile probation officer, of the motion for early termination and/or the scheduled hearing.

The victim is permitted to: 1) request and attend a hearing; 2) submit a victim-impact statement; and 3) object to the early termination.

For procedures on motions, see Rule 344. For filing and service requirements, see Rule 345.

If all parties are in agreement with the termination, the court may terminate court supervision without a hearing.

For procedures on the dispositional order, see Rule 515. See also, 42 Pa.C.S. § 6352. For collection of outstanding restitution regardless of court supervision status, see 42 Pa.C.S. § 9728.

Official Note: Rule 632 adopted February 26, 2008, effective April 1, 2008.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 632 published with the Court's Order at 38 Pa.B. 1147 (March 8, 2008).

Explanatory Report

Under the Purposes Clause of the Juvenile Act, the court shall make findings and enter an order consistent with the protection of the public interest that provides balanced attention to the protection of the community, the imposition of accountability for offenses committed, and the development of competencies to enable the juvenile to become a responsible and productive member of the community. See 42 Pa.C.S. § 6301(b)(2).

Part of the juvenile's accountability is confronting the victim and seeking to repair the harm inflicted. Restitution owed to the victim should be included in the dispositional order or as a condition of an informal adjustment or a consent decree. See Rules 312 and 512.

These proposed rule changes further emphasize that the victim shall be part of the court process. The victim must receive notice of hearings and be afforded the opportunity to submit a victim-impact statement. The victim may also be present and offer testimony at hearings. See Rules 132, 241, 242, 311, 312, 360, 370, 371, 390, 500, 512, 513, 600, 610, and 632.

When there is a proposed change in the dispositional order pursuant to Rule 610, the victim shall be given notice and an opportunity to be heard. This is especially important if the change is substantially different from the original court order. See Rule 610.

Additionally, the victim may object to a motion for early termination of the court's supervision of the juvenile. If the court schedules a hearing to terminate court supervision, the victim must be afforded an opportunity to be heard before the court enters its final order. See Rule 632.

[Pa.B. Doc. No. 10-2351. Filed for public inspection December 10, 2010, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 2, 3, 4, 5 AND 8]

Proposed Amendments to Rules 242, 394, 406, 512 and 800

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 242, 394, 406, 512, and 800 be adopted and prescribed. These proposed modifications address the role of the attorney for the Commonwealth in presenting cases.

The following Explanatory Report highlights the intent of this Rule. Please note that the Committee's 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 Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Tuesday, January 25, 2011.

*By the Juvenile Court
Procedural Rules Committee*

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

PART D. PRE-ADJUDICATORY DETENTION

Rule 242. Detention Hearing.

A. Informing juvenile of rights. Upon commencement of the hearing, the court shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing.*

1) *Conduct.*

a) The hearing shall be conducted in an informal but orderly manner.

b) **The attorney for the Commonwealth shall present evidence to support the written allegation.**

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) **Juvenile's rights.** The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:

a) cross-examine witnesses offered against the juvenile; and

b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

C. *Findings.* The court shall determine whether:

1) there is probable cause that a delinquent act was committed by the juvenile; and

2) detention of the juvenile is warranted.

D. *Filing of petition.* If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

Comment

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. See 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. See Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the juvenile. See Rule 363 for time of service. See Rule 331 for service of the petition. See Rule 330 for petition requirements.

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

Official Note: Rule 242 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART G. TRANSFER FOR CRIMINAL PROSECUTION

Rule 394. Transfer Hearing.

A. *Scheduling.* The court shall conduct a transfer hearing no earlier than three days after the notice of request for transfer to criminal proceedings is served unless this time requirement is waived.

B. **Burden of proof.** Unless the provisions of 42 Pa.C.S. § 6355 (g)(1) & (2) apply, the attorney for the Commonwealth shall have the burden of establishing by a preponderance of the evidence that:

1) there is a *prima facie* showing of evidence that the juvenile committed a felony delinquent act;

2) the public interest is served by transfer of the case to criminal proceedings; and

3) the juvenile is not amenable to treatment, supervision, or rehabilitation as a juvenile.

C. *Findings.* At the hearing, if the court finds:

1) the juvenile is fourteen years old or older at the time of the alleged delinquent act;

2) notice has been given pursuant to Rule 390;

3) [there is a *prima facie* showing of evidence that the juvenile committed a felony delinquent act;

4) there are reasonable grounds to believe that transfer of the case for criminal prosecution will serve the public interest by considering all the relevant factors] the Commonwealth has met its burden of proof pursuant to paragraph (B); and

[5)] 4) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill,

[Then] then the court shall transfer the case to the division or a judge of the court assigned to conduct criminal proceedings for prosecution. Otherwise, the court shall schedule an adjudicatory hearing.

Comment

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the "*prima facie* phase." The court should determine if there is a *prima facie* showing of evidence that the juvenile committed a delinquent act and if an adult committed the offense, it would be considered a felony. If a *prima facie* showing of evidence is found, the court proceeds to the second phase, known as the "public interest phase." During the "public interest phase," the court should determine if the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile and what is in the public's interest.

In determining public interest, the court should balance the following factors: 1) the impact of the offense on the victim or victims; 2) the impact of the offense on the community; 3) the threat posed by the juvenile to the safety of the public or any individual; 4) the nature and circumstances of the offense allegedly committed by the juvenile; 5) the degree of the juvenile's culpability; 6) the

adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system; and 7) whether the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile by considering the following factors: a) age; b) mental capacity; c) maturity; d) the degree of criminal sophistication exhibited by the juvenile; e) previous records, if any; f) the nature and extent of any prior delinquent history, including the success or failure of any previous attempt by the juvenile court to rehabilitate the juvenile; g) whether the juvenile can be rehabilitated prior to the expiration of the juvenile court jurisdiction; h) probation or institutional reports, if any; and 8) any other relevant factors.

The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court and that the juvenile is not amenable to treatment, supervision, or rehabilitation in the juvenile system rests with the Commonwealth unless: 1) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the juvenile was fourteen years of age at the time of the offense; or the juvenile was fifteen years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and 2) there is a *prima facie* case that the juvenile committed a delinquent act that, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of "delinquent act" in 42 Pa.C.S. § 6302. If the preceding criteria are met, then the burden of proof rests with the juvenile. *See* 42 Pa.C.S. § 6355.

For detention time requirements for juveniles scheduled for a transfer hearing, see Rule 391.

Official Note: Rule 394 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 394 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 4. ADJUDICATORY HEARING

Rule 406. Adjudicatory Hearing.

A. Manner of hearing.

1) The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner.

2) **The attorney for the Commonwealth shall present evidence in support of the petition and have the burden of establishing beyond a reasonable doubt that the juvenile committed the delinquent act(s).**

B. Recording. The adjudicatory hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

Comment

Under paragraph (A), the juvenile does not have the right to trial by jury. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

Official Note: Rule 406 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 406 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

A. Manner of hearing. The court shall conduct the dispositional hearing in an informal but orderly manner.

1) *Evidence.* The court shall receive any oral or written evidence [**which**] **from both parties and the juvenile probation officer that** is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.

2) *Opportunity to be heard.* Before deciding disposition, the court shall give the juvenile and the victim an opportunity to make a statement.

B. Recording. The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

C. Duties of the court. The court shall determine on the record that the juvenile has been advised of the following:

- 1) the right to file a post-dispositional motion;
- 2) the right to file an appeal;
- 3) the time limits for a post-dispositional motion and appeal;
- 4) the right to counsel to prepare the motion and appeal;
- 5) the time limits within which the post-dispositional motion shall be decided; and
- 6) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

Comment

Under paragraph (A)(2), for victim's right to be heard, see Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

Official Note: Rule 512 adopted April 1, 2005, effective October 1, 2005[; amended]. Amended May 17, 2007, effective August 20, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 37 Pa.B. 2509 (June 2, 2007).

CHAPTER 8. SUSPENSIONS

Rule 800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

1) The Act of November 21, 1990, P. L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Pa.R.Crim.P. Rule 211, through Pa.R.J.C.P. Rule 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206, and 211.

2) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 124, 140, and 364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.

4) The Public Defender Act, Act of December 2, 1968, P. L. 1144, No. 358, § 1 *et seq.* as amended through Act of December 10, 1974, P. L. 830, No. 277, § 1, 16 P. S. 9960.1 *et seq.*, which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which require separate counsel if there is a conflict of interest.

5) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.

6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.

7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.

8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to issue an arrest warrant, which may lead to detention in limited circumstances.

9) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if

elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.

10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.

11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty-four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.

12) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(b), which provides that the district attorney, upon request of the court, shall present the evidence in support of the petition, is suspended only insofar as the Act is inconsistent with Rule 242(B)(1)(b) which provides the district attorney shall present the evidence in support of the petition.

13) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged* delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.

[13] 14) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P. L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

[14] 15) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.

[15] 16) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1) & (2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

[16] 17) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional

review hearings to be held at least every six months when a juvenile is removed from the home.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 102.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005[; amended]. Amended December 30, 2005, effective immediately[; amended]. Amended March 23, 2007, effective August 1, 2007[; amended]. Amended February 26, 2008, effective June 1, 2008[; amended]. Amended March 19, 2009, effective June 1, 2009. Amended February 12, 2010, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 800 published with the Court's Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 37 Pa.B. 1483 (April 7, 2007).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 39 Pa.B. 1614 (April 4, 2009).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 40 Pa.B. 1073 (February 27, 2010).

Explanatory Report

Background

The Committee believes that the Rules need to clarify that the *prosecutor* must prosecute. Therefore, the following changes address the prosecutor's function, burden of proof, and presence at juvenile hearings.

Rule 242. Detention Hearing

The proposed addition to this Rule provides that the attorney for the Commonwealth must present the evidence. The Juvenile Act provides that the attorney for the Commonwealth, at the request of the court, shall present the evidence in support of the petition. *See* 42 Pa.C.S. § 6336(b). Rule 800 suspends the Juvenile Act only by removing the "at the request of the court" language, making the prosecutor's presence mandatory.

It is the role of the prosecutor to put forth the evidence on behalf of the Commonwealth. This duty cannot be performed by a juvenile probation officer, master, judge, or any other person.

Rule 394. Transfer Hearing

The proposed addition to this Rule clarifies who carries the burden of proof.

Unless the exceptions of 42 Pa.C.S. § 6355 (g)(1) & (2) apply, the attorney for the Commonwealth has the burden of establishing by a preponderance of evidence that: 1) there is a *prima facie* showing that the juvenile committed a felony delinquent act; 2) public interest is served by the transfer; and 3) the juvenile is not amenable to treatment, supervision, and rehabilitation as a juvenile.

If 42 Pa.C.S. § 6355 (g)(1) & (2) apply, the juvenile has the burden of establishing by a preponderance of evidence that: 1) public interest is served by adjudicating the

juvenile in juvenile court; and 2) the juvenile is amenable to treatment, supervision, and rehabilitation in the juvenile system.

Rule 406. Adjudicatory Hearing

The proposed additions to this Rule provide that the attorney for the Commonwealth must present the evidence in support of the petition and has the burden of establishing beyond a reasonable doubt that the juvenile committed the delinquent act(s). *See* Rule 800 for suspension of the Juvenile Act by eliminating "at the request of the court" from 42 Pa.C.S. § 6336(b). The presence of the prosecutor at this hearing is mandatory.

Rule 512. Dispositional Hearing

The proposed additions to this Rule provide that the juvenile, the attorney for the Commonwealth, and the juvenile probation officer may submit evidence for the Court's consideration in determining the disposition of the juvenile. The victim's testimony may be presented through the attorney for the Commonwealth. The attorney for the Commonwealth may decide not to present evidence as to the disposition of the juvenile; however, the prosecutor must be present at this hearing.

Rule 800. Suspensions of Acts of Assembly

The Juvenile Act requires that the attorney for the Commonwealth shall present evidence in support of the petition at the request of the court. The attorney for the Commonwealth should be present for every proceeding and present the evidence. The "at the request of the court" language is removed by this suspension.

As stated *infra*, it is not the role of any other person to perform this function, which has been the practice in some counties. Juvenile probation officers, masters, judges, and other persons should not usurp the role of the prosecutor. It is the attorney for the Commonwealth exclusively who represents the interests of this Commonwealth.

[Pa.B. Doc. No. 10-2352. Filed for public inspection December 10, 2010, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CH. 1]

Proposed Amendments to Rule 151

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 151 be adopted and prescribed. These proposed modifications address the presumption of indigence for juveniles.

The following Explanatory Report highlights the intent of this Rule. Please note that the Committee's 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 Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Tuesday, February 1, 2011.

*By the Juvenile Court
Procedural Rules Committee*

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B. COUNSEL

Rule 151. Assignment of Counsel.

[**A. General.** If] All juveniles are presumed indigent. If a juvenile appears, at any proceeding, without counsel [**does not enter an appearance for the juvenile**], the court shall [**inform the juvenile of the right to**] appoint counsel for the juvenile prior to [**any**] the proceeding. [**In any case, the court shall assign counsel for the juvenile if the juvenile is without financial resources or otherwise unable to employ counsel.**]

B. Time.

1) If the juvenile is detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the detention hearing.

2) If the juvenile is not detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the adjudicatory hearing.]

Comment

This Rule contemplates presumption of indigency which may be rebutted. There is an inherent risk that the legal protections afforded juveniles could be eroded by making legal representation dependent upon the limited financial resources of their guardians, particularly where guardians have an income just above the guidelines. Additionally, the unwillingness of guardians to expend their resources should not determine the juvenile's opportunity to have counsel. There is also a risk that the attorneys hired by guardians might rely upon the guardians for decision making in a case rather than rely upon the juvenile as the law requires. Therefore, the guardians' income is not to be utilized for determining indigence.

Generally pursuant to this Rule, the court is to assign counsel in every case in which the juvenile has appeared without counsel. However, the court may give the juvenile a reasonable opportunity to

obtain a private attorney of the juvenile's choosing if there has been an indication of this desire.

Even if a waiver of counsel colloquy is completed and the court is satisfied that the juvenile may waive counsel pursuant to Rule 152, the juvenile is to have counsel to complete the waiver colloquy and thereafter, as stand-by counsel.

Counsel may be present at an intake hearing or participate in the decision to place the juvenile on informal adjustment with the probation office.

See also 42 Pa.C.S. § 6337 and *In re A.M.*, 766 A.2d 1263 (Pa. Super. Ct. 2001).

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 *et seq.*, was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed to juveniles when there is a conflict of interest. *See* Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 151 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 151 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Explanatory Report

Background

The intent of this Rule, as originally drafted, was that all juveniles receive appointed counsel. The Committee decided to use the language of the Juvenile Act which states that the court is to appoint counsel if "the juvenile is without financial resources or otherwise unable to employ counsel." The Committee interpreted the "otherwise unable to employ counsel" to cover all situations when a juvenile did not have counsel.

The following is an excerpt from the original Explanatory Report when the court adopted the Rules of Juvenile Court Procedure—Delinquency Matter on April 1, 2005:

This rule provides that the court is to assign counsel. If the Public Defender decides in a county that it will not represent a juvenile, the court may still assign "private" counsel for the juvenile. This rule does not say that the juvenile is entitled to a Public Defender. As a practical matter, the county may choose to have all juveniles represented by the Public Defender's Office because it is more cost effective than private counsel.

In some counties, the juvenile is not receiving counsel as anticipated. The practice in these counties is not to offer representation to a juvenile unless: 1) there was an application for services; and 2) the Poverty Guidelines were met based on the parent's income.

To eliminate this misconception and clarify the Rule's intent, modifications are being proposed.

Rule Discussion

The primary change to this Rule is that the juvenile is presumed indigent. It is also noted that every presumption may be rebutted. As stated in the Committee's previous Explanatory Report discussed *infra*, the Rule does not say that every juvenile is entitled to a Public Defender but, rather to counsel.

The Public Defender is to look at the juvenile's income, not the guardian's income. The juvenile is the client and needs representation in these cases. Because it is believed

that 99% of juveniles will qualify, the Rule provides for the presumption that juveniles are indigent.

As stated in the Interbranch Commission on Juvenile Justice (ICJJ) Report, there is an inherent risk that the legal protections afforded juveniles could be eroded by making that legal representation dependent on the limited financial resources of their parents, particularly when parents have an income just above the poverty guidelines. Additionally, the unwillingness of parents to expend their resources should not determine the juvenile's opportunity to have counsel. (Report pg. 50).

The Committee believes that a conflict of interest results from using the parents' income to determine whether the juvenile will be eligible for an attorney.

There are also situations in which the juvenile may wish to obtain private counsel on their own. The court may give the juvenile a reasonable opportunity to obtain such counsel.

[Pa.B. Doc. No. 10-2353. Filed for public inspection December 10, 2010, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Civil Rules of the Court of Common Pleas; No. 3 of 2010; Rules Doc.

Order of Court

And Now, to-wit, this 23rd day of November, 2010, *It Is Hereby Ordered, Adjudged and Decreed* that the following Amended Rule of the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division, adopted by the unanimous proxy vote of the Board of Judges on November 4, 2010, shall be effective (30) days after publication in the *Pennsylvania Bulletin*:

Amended Civil Rule 1303, Administrative Docket

Form 1303: Notice of Hearing Date, Notice to Defend and Notice of Duty to Appear at Arbitration Hearing.

By the Court

DONNA JO MCDANIEL,
President Judge

Order of Court

And Now, this 24th day of September, 2010, it is hereby *Ordered* that the *Hearing Notice* portion of the *Notice To Defend* of Allegheny County Local Rule 1303, Form 1303 is amended to read the following:

HEARING NOTICE

YOU HAVE BEEN SUED IN COURT. The above Notice to Defendant explains what you must do to dispute the claims made against you. If you file the written response referred to in the Notice to Defendant, a hearing before a board of arbitrators will take place in the Compulsory Arbitration Center. Report to the Arbitration Assembly Room, Courtroom Two, Seventh Floor City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219, on _____, _____ at 9:00 A.M. **IF YOU FAIL TO FILE THE RESPONSE DESCRIBED IN THE NOTICE TO DEFEND, A JUDGMENT FOR THE**

AMOUNT CLAIMED IN THE COMPLAINT MAY BE ENTERED AGAINST YOU BEFORE THE HEARING.

BY THE COURT:

_____, A.J.

Form 1303. Notice of Hearing Date, Notice to Defend and Notice of Duty to Appear at Arbitration Hearing

IN THE COURT OF COMMON PLEAS OF ALLEGHENY
COUNTY, PENNSYLVANIA CIVIL DIVISION

_____ ARBITRATION DOCKET
_____ NO. _____

Plaintiff,

vs.

HEARING DATE _____

Defendant.

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE, The Allegheny County
Bar Association
11th Floor Koppers Building, 436 Seventh Avenue
Pittsburgh, Pennsylvania 15219
Telephone: (412) 261-5555

HEARING NOTICE

YOU HAVE BEEN SUED IN COURT. The above Notice to Defend explains what you must do to dispute the claims made against you. If you file the written response referred to in the Notice to Defend, a hearing before a board of arbitrators will take place in the Compulsory Arbitration Center. Report to the Arbitration Assembly Room, Courtroom Two, Seventh Floor City-County Building, 414 Grant Street, Pittsburgh, Pennsylvania 15219, on _____, _____ at 9:00 A.M. **IF YOU FAIL TO FILE THE RESPONSE DESCRIBED IN THE NOTICE TO DEFEND, A JUDGMENT FOR THE**

AMOUNT CLAIMED IN THE COMPLAINT MAY BE ENTERED AGAINST YOU BEFORE THE HEARING.

DUTY TO APPEAR AT ARBITRATION HEARING

If one or more of the parties is not present at the hearing, THE MATTER MAY BE HEARD AT THE SAME TIME AND DATE BEFORE A JUDGE OF THE COURT WITHOUT THE ABSENT PARTY OR PARTIES. THERE IS NO RIGHT TO A TRIAL DE NOVO ON APPEAL FROM A DECISION ENTERED BY A JUDGE.

NOTICE: You must respond to this complaint within twenty (20) days or a judgment for the amount claimed may be entered against you before the hearing.

If one or more of the parties is not present at the hearing, the matter may be heard immediately before a judge without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a judge.

Editor's Note: Adopted October 4, 2006, effective December 4, 2006.

[Pa.B. Doc. No. 10-2354. Filed for public inspection December 10, 2010, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Amended/Adopted Civil Rules of Procedure

Order of Court

And Now, this 23rd day of November, 2010 at 11:00 a.m., Schuylkill County Civil Rules of Procedure No. 1915.1(b), 1915.3, 1915.15 are amended and Civil Rule of Procedure No. 1915.3a is adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File seven (7) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts;
- 2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau.
- 3) Forward one (1) certified copy of this Order and Rule with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.
- 4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.
- 5) Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Proposed Revisions to Schuylkill County Rules of Civil Procedure

Rule 1915.1(b). Definitions.

"Kids First." A four hour orientation and education program established to help parents and other parties in child custody actions to understand the effects of separation, divorce, and family conflicts in their lives and in the lives of their children.

Rule 1915.3. Commencement of Action. Complaint. Order.

(c) In addition to the information required by Pa.R.C.P. 1915.15, every complaint for custody, partial custody or visitation, and every petition for modification of an existing custody order, shall contain the following language:

- (1) "Plaintiff has been advised of the requirements to attend the Kids First program."
- (2) "Defendant has been advised of the requirements to attend the Kids First program."

(d) A completed order shall be attached to the complaint or petition which includes a provision that all parties attend the Kids First program and the Custody Conciliation Conference which shall be in substantially the form set forth in Sch.R.C.P. 1915.15. All parties named in the pleadings must register for and attend the Kids First program as ordered.

Rule 1915.3a. Kids First Program.

(a) The Court Administrator shall determine the dates, times, and location of the Kids First program.

(b) The name, address, and contact information for the presenter of the Kids First program are: Anthony J. Libassi, 200 Adams Avenue, Scranton, PA 18503, (570) 558-1002, (toll free) 888-215-7445, and www.libassimmediation.com.

(c) Brochures and registration forms for the Kids First program will be available at the Custody Office, Schuylkill County Law Library, and the Prothonotary's Office.

(d) Parties residing outside of Schuylkill County may contact the presenter for possible alternative programs or alternative scheduling if they are unable to attend Kids First as scheduled.

(e) The presenter of Kids First is authorized to approve individual requests for changes to the Kids First registration requirements and scheduling, only upon a showing of good cause.

(f) Upon successful completion of the Kids First program, the presenter shall issue a certificate of completion to the party and provide the Court Administrator of Schuylkill County with a certification of completion which shall be docketed and made part of the record.

(g) The affidavit of service or the certificates of service of a complaint for custody, partial custody, or visitation, and a petition for the modification of custody, shall contain a statement that the opposing party or counsel of record for the opposing party has been served with the Kids First brochure and registration form.

(h) A party to a custody proceeding who has successfully completed the Kids First program will be excused from attending another Kids First program if the party files of record an affidavit stating that the party has attended and successfully completed the Kids First program with a copy of the certificate of completion attached as an exhibit.

Rule 1915.15. Form of Complaint.

(a) In addition to the information required by Pa.R.C.P. 1915.15(a) and (b), each complaint for custody, partial custody, or visitation, or a petition to modify an existing custody order, shall have attached to its front an order in substantially the following form:

**IN THE COURT OF COMMON PLEAS FOR
SCHUYLKILL COUNTY
CIVIL ACTION - LAW**

	:	
	:	
Plaintiff,	:	
	:	No.: S-
VS.	:	
	:	
	:	
	:	
Defendant.	:	

ORDER OF COURT

AND NOW, this ___ day of _____, 200_. at ___m., you are hereby ORDERED as follows:

You have been sued in Court to obtain Custody, Partial Custody or Visitation of the child(ren) named in the Complaint.

I. PARENT EDUCATION PROGRAM

1. ALL PARTIES NAMED ABOVE SHALL ATTEND AND COMPLETE THE "KIDS FIRST" PROGRAM. THE PROGRAM IS REQUIRED FOR ALL PARTIES PARTICIPATING IN A CUSTODY ACTION. PARTICIPATION IS REQUIRED WHETHER OR NOT AN AGREEMENT IS SUBMITTED.

2. EACH OF YOU SHALL CONTACT "KIDS FIRST" WITHIN TEN (10) DAYS OF RECEIVING THIS ORDER TO SCHEDULE AND REGISTER FOR THE NEXT AVAILABLE PROGRAM IF YOU FAIL TO COMPLY WITH THIS PROVISION OF THIS ORDER, CONTEMPT CHARGES AGAINST YOU SHALL BE FILED WITH THE COURT.

TO SCHEDULE AND REGISTER FOR THE "KIDS FIRST" PROGRAM CONTACT ANTHONY LIBASSI BY ONE OF THE FOLLOWING:

- (a) internet: WWW.LIBASSIMEDIATION.COM
- (b) telephone: 570-558-1002
888-215-7445 (toll free)
- (c) mail: ANTHONY LIBASSI
200 Adams Avenue, First Floor
Scranton, PA 18503

YOU ARE EACH REQUIRED TO PAY A FEE OF FORTY DOLLARS (\$40.00) DIRECTLY TO THE "KIDS FIRST" PROGRAM AT THE TIME OF REGISTRATION.

3. LOCATION OF "KID FIRST" PROGRAMS:

SCHUYLKILL COUNTY COURTHOUSE
401 N. 2nd STREET
POTTSVILLE, PA
PHONE: 570-341-2007

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN FINES, IMPRISONMENT OR OTHER SANCTIONS.

II. CUSTODY CONCILIATION CONFERENCE

You are ordered to appear in person at the *Custody Conciliation Office*, of the Schuylkill County Courthouse on _____, for a Custody Conciliation Conference.

You are further ordered to bring with you the fully completed conciliation questionnaire provided by the Court.

If you fail to appear as provided by the Order, and Order of Custody, Partial Custody or Visitation may be entered against you or the Court may issue a Warrant for your arrest.

III. GENERAL PROVISIONS

YOU SHOULD TAKE THIS PAPER (and the attached papers) TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PENNSYLVANIA BAR ASSOCIATION,
Lawyer Referral Services
100 South Street, P. O. Box 186,
Harrisburg, PA 17108
(800) 692-7375

Counsel and litigants without counsel are ORDERED to *immediately* consult their schedules for conflicts and to promptly request a continuance where necessary because of a prior attachment or emergency situation. ALL requests for a continuance of a Custody Conciliation conference must be made on the APPLICATION FOR CONTINUANCE form available from the offices of the Court Administrator, Custody Conciliator or Prothonotary in the Schuylkill County Courthouse. The application must be filed in the Custody Conciliation Office. A continuance will be granted only upon good cause shown.

The moving party shall immediately serve on all interested parties a copy of the original pleading, this order, "Kids First" registration and information, and a custody conciliation questionnaire; and shall further file an affidavit verifying service.

Americans with Disabilities Act of 1990: The Court of Common Pleas of Schuylkill County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any program, hearing or business before the court. You must attend the scheduled conference or hearing.

BY THE COURT,

J.

[Pa.B. Doc. No. 10-2355. Filed for public inspection December 10, 2010, 9:00 a.m.]

**SCHUYLKILL COUNTY
Amended Civil Rule of Procedure 212.1**

Order of Court

And Now, this 23rd day of November, 2010 at 11:00 a.m., Schuylkill County Civil Rule of Procedure No. 212.1 is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File seven (7) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts;

2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau.

3) Forward one (1) certified copy of this Order and Rule with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.

4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

5) Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Rule of Civil Procedure

Rule 212.1. Amended.

(b) A copy of Prothonotary Form 212 shall be served on all counsel contemporaneously with the filing thereof. Within 20 days after filing of the form, opposing counsel may file with the Prothonotary written objections thereto stating the reasons, and shall serve a copy thereof upon the Court Administrator and other counsel. Upon receipt of the objections to a certificate of readiness, the moving party should file a written response with the Prothonotary and Court Administrator within 10 days of the date of filing of the objections and contemporaneously serve the response upon opposing counsel. The Prothonotary shall transmit the response to the objections to the Civil Deputy Court Administrator so the response can be considered along with the objections. The Court Administrator shall promptly deliver the certificate, objections, and any response thereto to the President Judge who shall promptly dispose of said objections. Failure to file such objections constitutes a waiver of any objections to the certificate of readiness, including, but not limited to, any claim that discovery has not been completed. If a summary judgment motion is contemplated by the non-moving party, that party must file objections to the certificate of readiness or the right to do so will be deemed waived.

[Pa.B. Doc. No. 10-2356. Filed for public inspection December 10, 2010, 9:00 a.m.]

SUPREME COURT

Duty Assignment Schedule for Emergency Petitions in the Year 2011; No. 359 Judicial Administration Doc.

Order

Per Curiam:

And Now, this 22nd day of November, 2010, the emergency duty assignment for the year 2011, is herewith adopted.

January	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
February	Justice Thomas G. Saylor Justice Debra Todd	(Eastern District) (Western District)
March	Justice Max Baer Justice Joan Orie Melvin	(Eastern District) (Western District)
April	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
May	Justice Thomas G. Saylor Justice Debra Todd	(Eastern District) (Western District)
June	Justice Max Baer Justice Joan Orie Melvin	(Eastern District) (Western District)
July	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
August	Justice Thomas G. Saylor Justice Debra Todd	(Eastern District) (Western District)
September	Justice Max Baer Justice Joan Orie Melvin	(Eastern District) (Western District)
October	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
November	Justice Thomas G. Saylor Justice Debra Todd	(Eastern District) (Western District)
December	Justice Max Baer Justice Joan Orie Melvin	(Eastern District) (Western District)

PATRICIA NICOLA,
Chief Clerk

Supreme Court of Pennsylvania

[Pa.B. Doc. No. 10-2357. Filed for public inspection December 10, 2010, 9:00 a.m.]

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 128]

Pesticides

The Department of Agriculture (Department) amends Chapter 128 (relating to pesticides) to read as set forth in Annex A. This final-form rulemaking is adopted under the specific authority in section 7(b)(2) of the Pennsylvania Pesticide Control Act of 1973 (act) (3 P. S. § 111.27(b)(2)) to promulgate appropriate regulations for the safe handling, transportation, use, storage, display, distribution and disposal of pesticides.

Purpose

The final-form rulemaking clarifies, updates and, in some instances, deletes the existing pesticide regulations to ensure the regulated community has a better understanding of the regulatory requirements and to maintain the Department's statutory mandate to protect the public health and welfare. Some of the amendments were also included to make the regulations gender neutral, bring the existing requirements into compliance with changes in Commonwealth law and comply with additional restrictions put forth by the United States Environmental Protection Agency (EPA). Additional requirements are included for State registration of EPA accepted pesticides, especially in the areas regarding sales of restricted use pesticides (RUP) and the identification of individuals seeking to sell or receive RUPs. These amendments were added to address homeland security issues.

The Department also rescinded several sections to ease the requirements on applicators and provide substantial cost savings to the Commonwealth and commercial and public pesticide application business. As a result of years of public and pesticide industry input, the Department incorporated many of the suggested comments and other changes to the regulations. The industry's input has been vital in producing reasonable and prudent regulations designed to protect the public health and welfare of the citizens of this Commonwealth.

Comments and Responses

Notice of proposed rulemaking was published at 39 Pa.B. 5564 (September 26, 2009), affording the public, the General Assembly and the Independent Regulatory Review Commission (IRRC) the opportunity to offer comments. Comments were received from IRRC, the Pennsylvania State University (PSU) and PennAg Industries Association (PennAg). A summary of those comments and the Department's response follows.

Comment 1. PennAg and its associated agribusinesses offered its general support for the proposed rulemaking. Based upon its input, review and discussions with various stakeholders throughout the industry, PennAg believes the final-form rulemaking to be fair and equitable to all parties involved.

Response. The Department acknowledges these comments and agrees that with the final-form rulemaking, the Department will be able to continue its regulatory oversight of the Pesticide Program.

Comment 2. IRRC expressed several concerns regarding the statutory and regulatory provisions regarding a

pesticide dealer and the Department's proposed regulations creating the new licensure category for a pesticide dealer manager. Specifically, IRRC questioned whether the creation of the pesticide dealer manager's licensure category in §§ 128.2, 128.3(a)(1), 128.10 and 128.12 was consistent with the act.

Response. There is no doubt that the General Assembly vested the Secretary of Agriculture with substantial statutory and regulatory authority to regulate, among other things, the distribution of pesticides. See section 7(b)(2) of the act. Given the heightened Federal and State level of concern with terroristic activity, one main area of regulatory deficiency the Department wanted to address in this final-form rulemaking was the possible illicit distribution and use of certain pesticides, especially the illicit use of RUPs which pose a substantially greater threat to human health. In its broad statutory authority to adopt appropriate regulations for carrying out the act, the Department believes that the language provides ample authority to create a subcategory of licensure under the pesticide dealer license. In fact, in section 12(e) of the act (3 P. S. § 111.32(e)), the General Assembly contemplated that a pesticide dealer would have an agent or employee and that pesticide dealer would be "responsible for the acts of each person employed by him in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides."

Presently, to purchase RUPs, an individual needs to be a certified applicator or a pesticide dealer. In accordance with existing regulations, a certified applicator shall successfully complete a written examination demonstrating competence in the use and handling of pesticides. However, in stark contrast, a pesticide dealer's license may be easily obtained by simply completing a form and paying the necessary fee. Therefore, the Department determined, with the concurrence of the industry, to place an additional requirement on pesticide dealer licensees, that is, employment of a pesticide dealer manager. This new requirement serves two purposes: 1) it introduces the written examination component into the pesticide dealer license process; and 2) it assures the Department that a person employed by a pesticide dealer has demonstrated an understanding of the distribution, use and safe handling of pesticides.

The Department agrees with IRRC that use of the term "license" in connection with a pesticide dealer manager might be confusing in that there is already a license requirement for pesticide dealers. Accordingly, the Department decided to replace "license" with "certificate" in this final-form rulemaking.

Comment 3. IRRC questioned why the \$15 annual fee for a pesticide dealer manager exceeds the \$10 annual fee for a pesticide dealer in section 12(b) of the act.

Response. As described in comment 2, the pesticide dealer manager annual certification will involve more administrative costs to the Department in processing applications, administering and verifying the successful completion of a written examination and overseeing other eligibility requirements. The Department believes that the imposition of a \$15 annual fee to defray the administrative costs to the Commonwealth is reasonable.

Comment 4. While PSU supported the vast majority of the Department's proposed regulations, it nevertheless specifically questioned the Department's proposed amendments to § 128.41(a)(1) (relating to requirements for

certification), which include the use of a pesticide exempted from Federal registration. PSU also expressed concern that, by its own interpretation, since it uses pesticides in educational and research programs, all of its employees who use pesticides would be required to be public applicators. Finally, PSU expressed concern with what it perceived as inconsistent prior notification language regarding five types of applications in § 128.85a(a)(1) (relating to ornamental or turf application notification).

Response. As to the Federal exemption issue, the Department believes that its regulation serves as a clarification, not a change to the existing regulations. Pesticides classified by the EPA as so-called “25(b)” products are still by their very definition “pesticides” in that those products are marketed to kill, control, eradicate or otherwise mitigate pests. The Federal 25(b) exemption is for Federal registration only. The Commonwealth, along with 38 other states, currently requires State registration of these same pesticides/products as the Department believes it is vital to the health and safety of the citizens of this Commonwealth, especially individuals on the Hypersensitivity List, for the Department to maintain regulatory control over these types of pesticides. The Department does not agree with PSU’s interpretation that all of its employees would be required to be public applicators under the proposed amendment since campus housing or food service do not fall within parameters of pesticide use in its educational and research programs. Accordingly, the Department declines to delete the language at this time. The Department is, of course, willing to revisit the issue at a later date should the need arise.

As to the inconsistency of the prior notification language, the Department agrees and made the appropriate changes to the final-form rulemaking.

Comment 5. With respect to proposed § 128.53(b) (relating to recordkeeping), IRRC asked the Department to explain the purpose of requiring pesticide application businesses to keep and maintain copies of personal identification records. IRRC also requested the Department clarify how the records must be secured and whose records are required to be maintained and secured.

Response. The recordkeeping requirements in § 128.53 are meant to pertain to registered pesticide application technicians who are employed by a pesticide application business. The Department added language in subsection (b) to clarify this. The purpose of verifying, documenting and maintaining personal identification records of an employee’s (technician) identity is to prevent or at least minimize the potential for misrepresentation of identity in an attempt to gain access to pesticides for illicit purposes. Given the heightened security issues at the Federal and State levels, the Department does not believe that requiring the pesticide business to document and secure its technician’s personal information is either burdensome or onerous.

As there are numerous methods to maintain and secure documents, the Department has allowed the pesticide application business to decide for itself the best method to secure those documents within the scope of its business practice. The Department added a provision to require the pesticide application business to secure the identification documents against identity theft. This change has been made to the final-form rulemaking.

Comment 6. With respect to proposed § 128.85a, IRRC raised five separate concerns with multiple questions regarding the provision’s clarity. IRRC recommend that

the Department “review Subsection (a) so that it provides a logical notice process and sufficient notice to neighbors who may be concerned about the application of a pesticide near their dwelling.” IRRC’s comments were broken out in three distinct categories (notification, mutual border/contiguous lands and Request for notification shall expire on December 31), which the Department will address as follows in this order.

Response. The Department agrees with IRRC’s concerns regarding the clarity of § 128.85a(a) and the applicable subparagraphs. When applicable, the Department amended final-form subsection (a).

Notification

Comment 7. IRRC noted that the written request for notification process in subsection (a)(1) was not clear. In its comment, IRRC posed several questions regarding this paragraph, which the Department answers as follows.

Response. As to § 128.85a(a)(1), the term “person” includes any resident who wishes to be notified of future pesticide applications to lawn, turf, ornamental or shade trees on neighboring property. There is no responsibility on the pesticide application business to provide notice if a request is not made. A pesticide application business, which has been requested to provide notification, can make the application, but if it has not properly notified the requester, the pesticide application business has run afoul of the Department’s pesticide regulations.

Comment 8. IRRC stated that the proposed language in subsection (a)(1)(i) as to whom notice should be given was confusing. IRRC queried how the pesticide business would know or verify that the list provided was complete or accurate.

Response. Regarding § 128.85a(a)(1)(i), the list of properties need only include those properties that the requester is concerned about. It does not have to be a complete list of all neighboring properties.

Comment 9. IRRC questioned what was implied by “The notification requirement becomes effective 7 days following receipt of the request. . . .”

Response. Regarding § 128.85a(a)(1)(ii), it is the “requirement to notify” which becomes effective 7 days following receipt of the written request. The general notification requirement, as part of the regulation, is always in effect. The 7 days can be construed as a grace period to afford companies to continue operations while putting their notification mechanism in place.

Comment 10. Subsection (a)(2) only requires a 12-hour notice “upon receiving a written request at least 7 days prior to the application date.” IRRC inquired whether the 12-hour notice would be required if a written request was received less than 7 days before the date of application.

Response. Regarding § 128.85a(a)(2), the person requesting notification shall submit the written request for notification at least 7 days prior to the pesticide application. This allows time for the pesticide application business to identify the location of its customers in relation to the neighboring properties of the requester. For a request to be valid, the requester only has to make the request once a year for each neighboring property where notification is desired. If the request is received less than 7 days prior to the pesticide application, the pesticide application business is not required to notify the requester of that application. Any valid request for notification shall be honored and provided to the requester at least 12 hours prior to the pesticide application. This allows the re-

quester time to make any preparations necessary prior to the actual pesticide application.

Comment 11. IRRC questioned the sufficiency of the 10-day period within which the pesticide application business has to provide copies of the pesticide labels.

Response. Regarding § 128.85a (a)(3), the requirement to provide a pesticide label within 10 days of a written request is consistent with the standard within the industry and consistent with other sections of the Department's pesticide regulations, for example, § 128.112(a)(2)(iv) (relating to notification of hypersensitive individuals). The information provided as part of the notification process, at least 12 hours prior to the application, including the brand name of the pesticide and EPA registration number, is sufficient for a requester to obtain information regarding potential effects from exposure to the particular pesticides. The type of information regarding effects on pregnancies, children, well water and pets would not necessarily be expressly stated on the pesticide label. Therefore, the 10-day time period would have no effect on the information.

Mutual border/contiguous lands

Comment 12. IRRC and PSU offered the same comment regarding the proposed language about the written request for notification to list the "premises sharing a mutual border."

Response. Regarding § 128.85a(a)(1)(i), the Department agrees with IRRC's observation that there is not a distance limitation between the requesters property line and the application site. The language has been amended to set a distance of 100 feet consistent with other notification requirements in the regulations.

Comment 13. IRRC recommends that the Department use only one clearly defined term regarding contiguous lands.

Response. The Department agrees with IRRC's recommendation. The Department deleted the term "contiguous lands" from § 128.85a(a)(2) in this final-form rulemaking.

Request for notification shall expire on December 31

Comment 14. IRRC questioned the practicality of the December 31 deadline for the expiration of the request for notification. IRRC recommended the Department consider a different method of expiration.

Response. Regarding § 128.85a(b), the Department believes that a December 31 expiration for all notification requests is reasonable and necessary for efficient administration of the notification process by pesticide application businesses. Allowing random 12-month expiration dates would place an unreasonable bookkeeping requirement on pesticide application businesses. Moreover, there are virtually no pesticide applications that fall under this notification requirement (ornamental and turf) made during the winter months. Accordingly, the Department declines to implement this recommendation.

Summary of Technical Changes to the Final-Form Rulemaking

During its review of public comments, the Department noticed that § 128.42(14)—(25) (relating to categories of commercial and public applicators) had been renumbered by the *Pennsylvania Code* and *Bulletin* staff in the proposed rulemaking. In its proposed rulemaking, the Department specifically deleted existing category No. 14 and reserved that number to maintain other numbered categories in proper sequence. The Department understands that subsections are not normally reserved in

rulemakings. However, the renumbering of those paragraphs would have a significant negative administrative and recordkeeping impact on the Department's applications, written examinations and other licensing information, as the Department would have to change its records to reflect the new category numbers. The Department discussed the resolution of this matter with representatives of the *Pennsylvania Code* and *Bulletin* staff. With their cooperation, the Department would like to maintain the numbering of § 128.42 as proposed by the Department.

The Department discovered a typographical error in proposed § 128.102(a)(2) (relating to protected designated areas). The Department incorrectly referenced 58 Pa. Code § 75.2 (relating to threatened species) as "endangered" species, when it should have been "threatened" species. The Department made that technical change to the final-form rulemaking at the recommendation of the *Pennsylvania Code* and *Bulletin* staff.

Fiscal Impact

Commonwealth

The Department has determined that the final-form rulemaking will have little or no adverse financial impact on the Commonwealth since all funds budgeted for the Pesticide Program are derived from the Pesticide Restricted Account. The funds in the Pesticide Restricted Account are obtained from licensing, permitting and registration fees and civil penalties placed upon pesticide manufacturers, dealers and applicators doing business in this Commonwealth.

There will, however, be some cost savings in the amount of time needed to review and process Hypersensitivity Registries as a result of the reduced number of times the registry is published.

Political subdivisions

The final-form rulemaking will not impose costs and will not have adverse fiscal impact on political subdivisions.

Private sector

The final-form rulemaking will have a direct fiscal impact on the private sector. Specifically, pesticide manufacturers will have increased fees for the registration of their pesticide product. Pesticide dealers will also have an increased fee. The final-form rulemaking will, however, provide some cost savings to the private sector by raising the insurance deductible levels.

General public

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

Paperwork Requirements

The final-form rulemaking will not appreciably increase the paperwork burden of the Department or other government units or citizens, including the regulated community, since there are already paperwork recordkeeping requirements in the existing regulations.

Effective Date

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

Contact Person

Individuals who need information about the final-form rulemaking should contact the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: David Scott.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 15, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5564, to IRRC and the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 October 6, 2010, the final-form rulemaking was approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2010, and approved the final-form rulemaking.

Findings

The Department finds that:

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

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

(3) The amendments that were made to this final-form rulemaking in response to comments received do not enlarge the purpose of the proposed rulemaking published at 39 Pa.B. 5564.

(4) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code Chapter 128, are amended by deleting §§ 128.83, 128.85, 128.86 and 128.87; by adding §§ 128.10, 128.12, 128.13, 128.83a, 128.85a and 128.107; and by amending §§ 128.2, 128.3, 128.11, 128.24, 128.31—128.35, 128.41—128.45, 128.51—128.53, 128.61—128.65, 128.71, 128.72, 128.81, 128.82, 128.84, 128.88, 128.91, 128.101—128.104, 128.106, 128.111 and 128.112 to read as set forth in Annex A.

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

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

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

RUSSELL C. REDDING,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6226 (October 23, 2010).)

Fiscal Note: Fiscal Note 2-149 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 128. PESTICIDES

Subchapter A. GENERAL PROVISIONS

§ 128.2. Definitions.

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

Act—The Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.61).

Application site—The specific location where a pesticide is applied.

Applicator certificate—A form issued by the Department to a commercial or public applicator following the successful completion of a certification examination or other certification requirements.

Area-wide application—A nonagricultural pesticide application to areas of 25 or more contiguous acres or a nonagricultural pesticide application made by or at the direction of a governmental entity to properties of more than one person.

Available if and when needed—The ability of a certified applicator to communicate with a person applying pesticides under his supervision so that the certified applicator can provide instructions and exercise control over the application and can be at the application site within 5 hours of receiving notification that his physical presence is necessary.

Business—A governmental entity or commercial establishment for profit or not-for-profit. For a pesticide application business having more than one place of business or operating under more than one name within this Commonwealth, each place of business and each name shall be considered a separate business. For a State or Federal entity, each district or region will be considered a separate business.

Common access area—The areas within a school building where students/attendees normally congregate, assemble or frequent during normal academic instruction or extracurricular activities. The term does not include areas such as kitchens, boiler rooms, utility/maintenance rooms and areas which are physically blocked or restricted from student/attendee access.

Constructive notification—A person shall be deemed to have received notification if an adult residing in the same dwelling unit is so notified; orally, or by certified mail, or by a message left on an answering device activated by contacting the residence, including electronic mail or facsimile.

Current registry—The Pesticide Hypersensitivity Registry with the most recent effective date.

Department—The Department of Agriculture of the Commonwealth.

Dosage or rate of application—The concentration of each pesticide, such as, a percent, ounces or quarts per gallon, pounds per 100 gallons, applied to a specific application site or target such as a crop, ornamental, cut stump, weed, animal, utility pole, reported as gallons per

acre, pounds per 1,000 square feet, ounces per linear foot, ounces per cubic foot or ounces per animal.

EPA—The United States Environmental Protection Agency.

FIFRA—Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (7 U.S.C.A. §§ 136—136y).

Fumigant—A pesticide that when released forms a gas.

General use pesticide—A pesticide not classified for restricted use.

Governmental entity—An executive or independent agency or unit of the Commonwealth, or local agency, including a county, a city, a borough, town, township, school district, municipal authority or political subdivision thereof.

Integrated pest management—The managed use of combined pest control alternatives, including cultural, mechanical, biological and chemical, to most effectively prevent or reduce to acceptable levels damage caused by pests.

Land contiguous to a restricted use pesticide application site—Premises which share a mutual border with the premises upon which the application site is located. The term does not include premises located more than 100 feet from the application site.

Perimeter treatment—

(i) The application of pesticide to the exterior of a structure to a maximum distance of 10 feet from the structure, unless the pesticide label clearly states otherwise, to prevent pests from invading the structure.

(ii) The term excludes tamper resistant bait stations.

Person—An individual, partnership, association, corporation or any organized group of persons whether incorporated or not.

Pesticide dealer manager—An owner or individual employed by a licensed pesticide dealer who is responsible for storage and distribution of restricted use pesticides.

Pesticide end-use dilution—Pesticide material resulting from the dilution of a registered pesticide according to label direction.

Pesticide hypersensitivity—Excessive or abnormal sensitivity to pesticides.

Primary residence—An individual's legal residence.

Prior notification—

(i) Notification of a proposed application of pesticides given not more than 45 days and not less than 14 days prior to the date of application which contains the following information:

(A) The proposed date of application.

(B) The municipalities where the proposed application sites are located.

(C) The name, address and telephone number of the pesticide application business to whom requests for additional information should be directed.

(ii) A request for prior notification shall expire on December 31 in the year in which it is made.

Private park—Privately owned outdoor real estate which includes a recreational area for use by the public, including an area with restricted access.

Production of an agricultural commodity—The term includes activities involved in the raising of plants or

animals and their products. The term does not include the protection or maintenance of harvested crops, slaughtered livestock or plant and animal products unless the protection or maintenance is carried out by the original producer of the agricultural commodity, who is a private applicator, or another private applicator.

Public park—Publicly owned outdoor real estate which includes a recreational area for use by the public, including an area with restricted access.

Recreational area—An outdoor place of relaxation, play or exercise.

Restricted use pesticide—The term includes the following:

(i) A pesticide classified for restricted use under section 3(d) of FIFRA (7 U.S.C.A. § 136(d)).

(ii) A pesticide designated by the Secretary for restricted use under section 7(b)(6) of the act (3 P.S. § 111.27(b)(6)).

School—A public, nonpublic or licensed private elementary or secondary school wherein a resident of this Commonwealth may fulfill the compulsory school attendance requirements and which meets the applicable requirements of Title IV of the Civil Rights Act of 1964 (42 U.S.C.A. § 2000c) (Public Law 88-352, 78 Stat. 241). The term also includes a kindergarten or preschool program operated by a school and a child day care center operating under a certificate of compliance issued by the Department of Public Welfare.

Secondary location—An address where an individual may be located other than the individual's primary residence, limited to the following:

(i) Place of employment.

(ii) School.

(iii) Vacation home.

Secretary—The Secretary of the Department.

Service container—A container other than the original labeled container of a registered pesticide used for the purpose of holding, storing or transporting an original registered pesticide material or a pesticide end-use dilution.

Specific site application—A nonagricultural pesticide application made by or at the direction of a person to property owned or rented by that person.

Swimming pool—An outdoor or indoor place used for bathing or for amateur, professional or recreational swimming, excluding single-family residential pools.

Therapeutic swimming pool—An indoor swimming pool or spa with a water temperature above 85° F used solely for the rehabilitation or medically recommended treatment.

Under the direct supervision of—The term includes the following:

(i) For a commercial or public certified applicator, the application of a pesticide by a registered pesticide application technician acting with the instructions and under the control of a certified applicator who is responsible for the actions of the technician and who is available when needed; or the application of a pesticide by a nonregistered or noncertified person acting with the instructions and under the continuous voice and visual control of a certified applicator who is responsible for the actions of the person and physically present at the application site. The supervising applicator shall be certified in the appropriate category relating to the application.

(ii) For a private certified applicator, the application of a restricted use pesticide by a noncertified person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available when needed.

Upon written request—The term includes a notice of inspection issued by the Department.

Use, or cause to be used, a pesticide inconsistent with its labeling—The use of a pesticide in a manner not permitted by its labeling. This phrase does not include:

(i) Applying a pesticide at a dosage, concentration or frequency less than that specified on its labeling.

(ii) Applying a pesticide against a target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling unless the labeling specifically states that the pesticide may only be used for the pests specified on the labeling.

(iii) Employing a method of application not prohibited by the labeling.

(iv) Mixing a pesticide with a fertilizer where the mixture is not prohibited by the labeling.

Worker Protection Standard—Includes all provisions of the Federal Worker Protection Standard as set forth in 40 CFR Part 170 (relating to worker protection standard).

§ 128.3. Fees.

(a) *Pesticide dealer's license*. The annual fee for a pesticide dealer's license is \$10 per location. The fee for a duplicate pesticide dealer's license is \$3.

(1) The annual fee for a pesticide dealer manager's certificate is \$15 per individual.

(2) The fee for a duplicate pesticide dealer manager's certificate is \$3.

(b) *Pest management consultant's license*. The annual fee for a pest management consultant's license is \$25. The fee for a duplicate pest management consultant license is \$8.

(c) *Pesticide application business' license*. The annual fee for a pesticide application business' license is \$35. The fee for a duplicate pesticide application business license is \$8.

(d) *Commercial applicator's certificate*. The annual fee for the commercial applicator's certificate is \$40. When the initial certification requires examination, no fee will be charged. The fee for a duplicate commercial applicator's certificate is \$10. If an applicator is employed by more than one pesticide application business, a separate certificate and fee is required.

(e) *Public applicator's certificate*. The triennial fee for a public applicator's certificate is \$10. A fee is not required when the initial certification requires examination. The fee for a duplicate public applicator's certificate is \$3.

(f) *Examination fees*. Examination fees are nonrefundable. The following examination fees, with payment made in advance, will be charged:

(1) Commercial/public applicator's core examination—\$50.

(2) Commercial/public applicator's category examination—\$10.

(3) Pesticide dealer manager's examination—\$50.

(4) Private applicator's examination—no charge.

(5) Pest management consultant's examination—no charge except that a fee of \$5 will be charged if an examination is requested on other than a regularly scheduled examination date.

(g) *Registration fee for a pesticide application technician*.

(1) *Commercial pesticide application technician*. An annual registration fee of \$30 will be charged to register a commercial pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

(2) *Public pesticide application technician*. An annual registration fee of \$20 will be charged to register a public pesticide application technician with the Department. The fee for a duplicate technician registration is \$7.

(h) *Private applicator's permit*. The triennial fee for a private applicator's permit is \$10. The fee for a duplicate private applicator's permit is \$3. A fee will not be charged for a special permit which may be issued in conjunction with the private applicator's permit.

(i) *Product registration*. The annual fee to register a pesticide is \$250.

Subchapter B. LICENSES, CERTIFICATES AND PERMITS

PESTICIDE DEALERS

§ 128.10. Licensing requirements for pesticide dealer.

(a) A person may not purchase or attempt to purchase a restricted use pesticide for resale or distribution unless the person has a current and valid pesticide dealer license.

(b) Each pesticide dealer shall, at all times, employ at least one individual who possesses a valid pesticide dealer manager certificate.

(1) A licensed pesticide dealer shall notify the Department in writing within 15 days of a change in its license information including the employment status of its pesticide dealer manager certificate holder.

(2) A licensed pesticide dealer shall return to the Department within 15 days the voided pesticide dealer manager's certificate of an employee that is no longer employed by the pesticide dealer. If the pesticide dealer manager's certificate issued by the Department is not available, the pesticide dealer shall notify the Department in writing within 15 days of the employee's termination and provide an explanation of why the certificate is unavailable and the last known home address for the individual.

(c) A pesticide dealer may not distribute a restricted use pesticide unless the receiver provides proof of appropriate valid certification or license and proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

§ 128.11. Recordkeeping.

(a) A pesticide dealer shall keep for each distribution of a restricted use pesticide a record containing the following information:

(1) The name and address of the customer and his applicator's certificate number or business or dealer's license number.

(2) The brand name of the restricted use pesticide.

(3) The EPA registration number of the restricted use pesticide.

(4) The amount of the restricted use pesticide.

(5) The date of the distribution.

(6) Signature and identification information of the individual accepting delivery.

(b) A record required to be kept under this section shall be completed within 24 hours of the distribution in written or printable form, maintained for at least 3 years and shall be made immediately available to the Department upon request or immediately available to medical personnel in an emergency.

§ 128.12. Issuance of a pesticide dealer manager certificate.

(a) The Department will issue a pesticide dealer manager certificate to an applicant 18 years of age or older, upon verification of passing a written competency examination and payment of the appropriate fee. Renewal of the dealer manager certificate will be based on receipt by the Department of an application accompanied by the appropriate fee.

(b) If a pesticide dealer manager fails to renew the certificate for a period of 1 or more years, the pesticide dealer manager shall reestablish eligibility as described in § 128.13 (relating to determination of competence).

(c) The certificate for a pesticide dealer manager will expire on December 31st of each year.

(d) For currently licensed pesticide dealer locations, the requirements for employment of a pesticide dealer manager certificate holder will become effective December 11, 2011. Initial examination fee will be waived until December 11, 2011. The requirements for a pesticide dealer manager certificate holder will be immediately effective for pesticide dealer locations licensed on or after December 11, 2010.

(e) The pesticide dealer manager certificate is only valid when the certificate holder is employed by the licensed pesticide dealer indicated on the certificate. A new certificate will be issued without charge if the certificate holder is subsequently employed by a different licensed pesticide dealer and has not lost eligibility as set forth in subsections (b) and (c).

§ 128.13. Determination of competence.

(a) At least one individual at each pesticide dealer location shall show competence in the storage and distribution requirements for restricted use pesticides. Competence will be determined on the basis of a written examination. The examination will include the following:

(1) Safety.

(2) Labeling and label comprehension.

(3) Storage and security.

(4) Spill control.

(5) Transportation.

(6) Pesticide disposal.

(7) Recognition of pesticide poisoning symptoms and first aid.

(b) An application to take an examination shall be filed along with the appropriate fee with the Department at least 10 working days prior to the date of the examination.

(c) The examination will be proctored. Successful completion of the examination will entitle a person to hold a pesticide dealer managers certificate. An opportunity will be provided to retake an examination if a passing grade has not been achieved.

(d) The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

(e) A person may not use reference materials during an examination unless approved by the Department or its designated agents.

(f) An application for a new pesticide dealer manager's certificate will be accepted throughout the calendar year. A full year's license fee will be required for a portion of a year, except that the Department may issue a certificate for an additional year when a new application is filed during the last 2 months of the certificate year.

PEST MANAGEMENT CONSULTANTS

§ 128.24. Recordkeeping.

(a) A pest management consultant shall keep for each instance in which he provides technical advice, supervision or aid or makes a recommendation to the user of a restricted use pesticide, the following information:

(1) The name and address of the person for whom this service was provided.

(2) The brand name of the pesticides recommended to be used.

(3) The amount of the pesticides recommended to be used.

(4) The dosage or rate of the pesticides recommended to be used.

(5) The date on which this service was provided.

(b) A record required to be kept under this section shall be maintained for at least 3 years and shall be made immediately available to the Department upon request or to medical personnel in an emergency.

PESTICIDE APPLICATION BUSINESSES

§ 128.31. Licensing requirements.

(a) A pesticide application business may not be operated without first obtaining a pesticide application business license.

(b) The license period shall end on December 31 each year, except that the Department may issue a license for the following year when an initial license application is filed during the last 2 months of a licensing year.

(c) A pesticide application business shall prominently display on every vehicle involved in the pesticide application phase of its business the license number assigned by the Department. The number must be in figures at least

3 inches high and be located on both sides of the vehicle at a readily visible location in a contrasting color.

(d) A licensed business shall notify the Department in writing within 15 days of a change in information in its application for licensing, or if it is no longer engaged in the application of pesticides.

(1) A licensed pesticide application business shall return to the Department within 15 days the voided applicator certification or register technician card of an employee that is no longer employed by the pesticide application business.

(2) If the certification or registered technician card issued by the Department is not available, the pesticide application business shall notify the Department in writing within 15 days of the employee termination and provide an explanation of why the card is unavailable and the last known home address for the individual.

(e) A business that meets the definition of a commercial applicator as defined in section 4(6)(C) of the act (3 P. S. § 111.24(6)(C)) may not apply a pesticide without having a valid certified applicator physically present at the application site unless all application personnel on site are valid registered technicians.

(f) If the application business includes aerial applications, the applicant shall provide proof of compliance with the Federal Aviation Administration regulations as described in 14 CFR Part 137 (relating to agricultural aircraft operations).

§ 128.32. Categories of business licenses.

A commercial or public business shall identify in its application those business categories in which it desires to operate. A business shall employ for each business category in which it makes a pesticide application at least one applicator who is certified in a specific applicator category recognized under the general business category and shall limit its applications to those applicator categories in which it employs at least one certified applicator. The business categories are listed in paragraphs (1)–(10). The applicator categories recognized under a particular business category are listed under that business category.

(1) *Category (A)*—Agricultural Plant Pest Control.

01 Agronomic Crops

02 Fruits and Nuts

03 Vegetable Crops

05 Forest Pest Control

08 Seed Treatment

(2) *Category (B)*—Agricultural Animal Pest Control.

04 Agricultural Animals

(3) *Category (C)*—Ornamental and Turf Pest Control.

06 Ornamental and Shade Trees

07 Lawn and Turf

22 Interior Plantscape

(4) *Category (D)*—Aquatic Pest Control.

09 Aquatic Pest Control

24 Swimming Pools

26 Sewer Root Control

(5) *Category (E)*—Right-of-Way Pest Control.

10 Right-of-Way and Weeds

(6) *Category (F)*—Industrial, Institutional, Structural and Health Related.

11 Household and Health Related

12 Wood Destroying Pests

14 (Reserved)

15 Public Health Vertebrate Pest Control

16 Public Health Invertebrate Pest Control

19 Wood Preservation

23 Park or school Pest Control

(7) *Category (G)*—Fumigation.

13 Structural Fumigation

20 Commodity and Space Fumigation

21 Soil Fumigation

(8) *Category (H)*—Demonstration and Research.

18 Demonstration and Research Pest Control

(9) *Category (I)*—Regulatory.

17 Regulatory Pest Control

(10) *Category (J)*—Aerial Applicator.

25 Aerial Applicator

§ 128.33. Assignment of work.

A pesticide application business may not allow an individual to make a pesticide application in an applicator category in which the individual has not been certified as an applicator or trained and registered as a technician.

§ 128.34. Financial responsibility.

(a) The Department will consider a certificate of insurance from an insurer or surety to be evidence of financial responsibility if the insurer or surety is licensed to do business under section 1605 of the Insurance Company Law of 1921 (40 P. S. § 991.1605), or otherwise permitted by Federal law or the Insurance Department to do business in this Commonwealth, if the following conditions are met:

(1) The certificate of insurance includes the name of the insurance company, policy number, insurance amount, type of coverage afforded and exclusions relating to damage arising from the use of pesticides and expiration date of the policy.

(2) The minimum comprehensive general liability insurance provided is \$100,000 for each occurrence of bodily injury liability and \$100,000 for each occurrence of property damage liability. A policy may be written with combined limits if the limits equal or exceed the sum of the individual limits.

(3) The certificate indicates coverage for completed operations and includes a statement indicating that the coverage applies to pesticide application.

(4) The maximum deductible amount does not exceed \$2,500 of the combined policy limits. If a pesticide application business has not satisfied the deductible amount in a prior claim, the policy may not contain a deductible amount.

(5) A current certificate of insurance is forwarded to the Department at each insurance renewal date which sets forth the same information specified in paragraphs (1)–(4).

(b) A pesticide application business desiring to qualify as a self-insurer may submit a written proposal of self-insurance to the Department for approval.

(1) The proposal shall include the following:

(i) A master self-insurance and security agreement.

(ii) A balance sheet and income statement which shall reflect the actual financial condition of the business as of the last complete calendar or fiscal year preceding the date of the proposal. These documents shall be prepared in accordance with generally accepted accounting principles and shall be certified by a certified public accountant.

(2) A business will not be approved as a self-insurer unless it posts certain collateral with the Department. This paragraph does not apply to government agencies or authorities.

(3) The minimum required security that shall be furnished to the Department is \$500,000.

(4) Only the following will be accepted as valid collateral for self-insurance purposes:

(i) United States currency, including United States Treasury bills, United States Treasury notes or other negotiable obligations of the United State Government. United States Savings Bonds are not negotiable.

(ii) Evidence of escrow deposits in Federal or State banks, credit unions or savings and loan associations if Federally insured. Escrow deposits shall be established for the sole purpose of providing security to meet the duties of a self-insurer.

(iii) Irrevocable letters of credit issued by a bank in this Commonwealth or another bank as approved by the Department.

(iv) Surety bonds issued by insurers authorized or eligible to do business in this Commonwealth.

(v) Bonds or other negotiable obligations issued by a state, subdivision or instrumentality of a state in the United States, if not in default as to principal or interest.

(vi) Corporate bonds, issued by an entity other than the proposed self-insurer, rated A or better by Moody's Bond Record, Moody's Investors Service, Inc.

(vii) Other security approved upon petition to the Department.

(5) The Department will hold the collateral furnished for the benefit of the persons to whom the self-insurer is obligated.

(i) The self-insurer shall pay for obligations incurred under the act by assets readily reduced to liquid assets, such as demand deposits, time deposits, negotiable instruments and other assets which may be readily reduced to liquid form.

(ii) If the self-insurer is not able to discharge its obligations, the self-insurer may petition the Department to release the collateral posted as is necessary to satisfy the obligations of the self-insurer.

(iii) If withdrawals from collateral are required, the self-insurer shall replace the security within 72 hours from the date of withdrawal, to retain its certificate as a self-insurer.

(6) A self-insurer shall annually furnish to the Department a report of claims incurred during the preceding calendar year.

(7) Upon approval by the Department of a self-insurance proposal, a self-insurance certificate will be

issued to the self-insurer. The certificate shall be renewed annually, after review that the Department deems appropriate.

(c) If the evidence of financial responsibility furnished by a pesticide application business no longer complies with this section, the business shall immediately provide other evidence of financial responsibility which complies with this section. If it fails to do so, the Secretary may revoke its license.

§ 128.35. Recordkeeping.

(a) A pesticide application business shall keep for every application of a pesticide a record containing the following information:

(1) The date of application. For a pesticide requiring a reentry time, the date of application must include the hour completed. For continuous applications, such as swimming pools and chemigation, the record must include start and finish dates and the total amount of pesticide products used during that time period. For each addition of a pesticide to the system, an entry to the record is required.

(2) The name and address of the customer and the address and location of the application site if different from the address of the customer.

(3) The brand name of the pesticides used.

(4) The EPA product registration number.

(5) The total amount of every pesticide used in pounds, ounces, gallons, liters, applied to a treated area.

(6) The dosage or rate of application, of every pesticide used.

(7) The names and the certification or technician's registration number of each person making or supervising the application. When applicable the names of noncertified/nonregistered persons involved in the application.

(8) The identification of the application site, including the specific field or land area and the crop and size of the area treated for pesticides used in the production of an agricultural commodity.

(b) When a restricted use pesticide is used in the production of an agricultural commodity, a copy of the record required under this section shall be provided by the application business to the customer within 30 days of the pesticide application.

(c) Pesticide product and application information shall be made immediately available to medical personnel in an emergency.

(d) A pesticide application record must be completed in written or printable form no later than 24 hours after the application date and made immediately available to the Department upon request.

(e) A record required to be kept under this section shall be maintained for at least 3 years.

COMMERCIAL AND PUBLIC APPLICATORS

§ 128.41. Requirements for certification.

(a) A person is deemed to be a commercial or public applicator and required to be certified if one or more of the following criteria are met:

(1) A person who applies or supervises the application of a pesticide on an easement or on the property or premises of another (other than his employer). This

includes the use of a pesticide exempted from Federal registration under § 128.91 (relating to EPA approval required).

(2) A person who applies or supervises the use of a restricted use pesticide on property owned by him or his employer when not applied for the purpose of producing an agricultural product.

(3) A person who applies or supervises the application of a pesticide to the following locations or who is involved in the following types of application:

(i) *Fumigation*—Includes a person who uses fumigants except a person who meets the definition of a private applicator.

(ii) *Golf courses*—Includes a person who uses pesticides in the establishment and maintenance of a golf course.

(iii) *Public and private parks*—Includes a person who uses a pesticide in a recreational or campground area of a public or private park.

(iv) *Educational and research institutions*—Includes a person employed by a public or private educational and research facility that uses pesticides in its educational or research programs.

(v) *Playgrounds and athletic fields*—Includes a person who applies a pesticide to a public playground or an athletic field.

(vi) *Apartment dwellings*—Includes an owner of an apartment building or an employee of an owner who applies a pesticide other than a disinfectant to an apartment structure of four or more units. Commercial certification is not required if the owner or employee resides in the apartment structure and applies general use pesticides to the unit in which he resides.

(vii) *Schools*—Includes a person who uses a pesticide on school property, except for the use of disinfectants and sanitizers within the school building.

(viii) *Swimming pools*—Includes a person who uses a pesticide in the care and maintenance of swimming pools or water recreation facilities associated with a public or private park, excluding lakes, ponds, rivers or streams.

(b) The following are exceptions to subsection (a)(3)(viii):

(1) Disinfectants and sanitizers not used for water treatment.

(2) The use of general use pesticides in the care and maintenance of a swimming pool at a private single-family residence.

(3) The use of a general use pesticide by an owner or employee in the care or maintenance of a swimming pool used solely as a therapeutic swimming pool.

§ 128.42. Categories of commercial and public applicators.

A commercial or public applicator applying or supervising the application of a pesticide shall be certified in one or more of the following applicator categories:

(1) *Agronomic crops*—The use of a pesticide in the production of an agricultural crop, including tobacco, grain, soybeans and forages and the application of a pesticide to noncrop agricultural land.

(2) *Fruits and nuts*—The use of a pesticide in the production of tree fruits, nuts and berries.

(3) *Vegetable crops*—The use of a pesticide in the production of vegetables, including, tomatoes, cabbage and celery.

(4) *Agricultural animals*—The use of a pesticide on animals, including beef cattle, dairy cattle, swine, sheep, horses, goats, poultry or other livestock and to premises where these animals are confined.

(5) *Forest pest control*—The use of a pesticide in a forest, forest nursery or forest seed producing area.

(6) *Ornamental and shade trees*—The use of a pesticide in the maintenance of an ornamental tree, shrub, flower or other ornamental.

(7) *Lawn and turf*—The use of a pesticide in the maintenance or production of lawn and turf.

(8) *Seed treatment*—The use of a pesticide on seed.

(9) *Aquatic pest control*—The use of a pesticide on standing or running water, excluding the use of a pesticide in a public health-related activity described in paragraph (16).

(10) *Right-of-way and weeds*—The use of a pesticide to maintain a public road, an electrical power line, a pipeline, a railway right-of-way or a similar type of area or to control vegetation around a structure, such as an oil tank, utility sub stations, an industrial railway siding, an airport, a parking lot, a fence or an industrial building or for the control of an invasive weed species in other areas.

(11) *Household and health related*—The use of a pesticide in, on or around a food handling establishment, a human or nonagricultural animal dwelling, an institution such as a school or hospital, an industrial establishment, a warehouse, a grain elevator and other types of structures whether public or private. The application of a pesticide to protect a stored, processed or manufactured product is also included. The use of a rodenticide or avicide is permitted in this category. The use of a pesticide in outdoor perimeter treatments to control pests, which may infest the structure, is included.

(12) *Wood destroying pests*—The use of a pesticide to control or prevent termites, powder post beetles or other wood destroying pests infesting a residence, school, hospital, store, warehouse or other structures or structural components, including wooden objects contained in or associated with the structure and the area adjacent to those structures.

(13) *Structural fumigation*—The use of a fumigant in or to a structure for the control of pests affecting the structure or its fixtures or inhabitants.

(14) (Reserved).

(15) *Public health vertebrate pest control*—The use of a pesticide to manage and control a vertebrate pest such as rodents or birds, affecting public health.

(16) *Public health invertebrate pest control*—The use of a pesticide to manage and control an invertebrate pest affecting public health.

(17) *Regulatory pest control*—The use of a pesticide to control an organism designated by the Commonwealth or the Federal government to be a pest requiring regulatory restrictions or control procedures to protect man or the environment.

(18) *Demonstration and research pest control*—The use of a pesticide to demonstrate to the public the proper method of application for a pesticide and the use of a

pesticide in research such as that undertaken by an extension specialist, county agent or vocational agriculture teacher.

(19) *Wood preservation*—The use of a pesticide in wood impregnation to control or prevent fungi, insects, bacteria, marine borers and other wood destroying pests and includes pole treating or restoration and the use of a fumigant for in-place treatment of utility poles.

(20) *Commodity and space fumigation*—The use of a fumigant in or to a structure, trailer, railcar, onboard ship, or in any type of fumigation chamber, such as under a tarpaulin for the control of pests in stored or in-transit commodities.

(21) *Soil fumigation*—The application of a fumigant to a soil environment.

(22) *Interior plantscape*—The use of a pesticide to control plant pests when the soil or plant to be treated is located within an enclosed structure.

(23) *Park or school pest control*—The use of a pesticide in a campground or recreational area of a public or private park or on school property.

(24) *Swimming pools*—The use of a pesticide in the care and maintenance of swimming pools.

(25) *Aerial applicator*—The use of a pesticide applied by aircraft to any crop or land area. Applicators in this category shall comply with § 128.85 (relating to ornamental or turf application) when making ornamental or turf applications.

(26) *Sewer root control*—The use of a pesticide to control vegetative growth in public and private sewage collection and distribution lines.

§ 128.43. Determination of competence.

(a) For each of the categories listed in § 128.42 (relating to categories of commercial and public applicators), competence in the use and handling of pesticides shall be determined on the basis of a written examination. The examination will include the following:

(1) Areas of knowledge and competence set forth in section 16.1 of the act (3 P. S. § 111.36a).

(i) Identification of pests to be controlled and the damages caused by pests.

(ii) The appropriate control measures to be used, including pesticides.

(iii) The hazards that may be involved in applying pesticides, to protect people and the environment.

(iv) The proper use of pesticide application equipment, including calibration and dosage calculations.

(v) Protective clothing and respiratory equipment required during application and handling of pesticides.

(vi) General precautions to be followed in cleaning and maintaining equipment used.

(vii) Transportation, storage, security and disposal of pesticides.

(viii) Applicable Federal and State pesticide laws and regulations.

(2) Safety.

(3) Labeling and label comprehension.

(b) An examination for certification will consist of two parts:

(1) One part of the examination, the core area, will be based on general information required of commercial and public applicators.

(2) The second part of the examination will be based on information related to the specific categories of commercial and public applicators.

(c) An examination will be proctored. The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address. Only reference materials approved by the Department may be used during the examination. Successful completion of the core area and successful completion of part two of the examination in a specific category will entitle a person to certification in that category. A person desiring certification for additional categories will be required to be examined for each additional category. An opportunity will be provided to retake an examination when a passing grade has not been achieved.

(d) If a person successfully completes only one part of the two-part examination, successful completion of the remaining part of the examination shall be obtained within 1 year from the date the initial part of the examination was successfully completed.

(e) An application to take an examination shall be filed along with the appropriate fee with the Department at least 10 working days prior to the date of the examination.

(f) A person may not use a reference source during an examination unless approved by the Department or its designated agents.

§ 128.44. Eligibility.

(a) A person is eligible for certification upon reaching 18 years of age and fulfilling the requirements under §§ 128.41—128.43 (relating to requirements for certification; categories of commercial and public applicators; and determination of competence). In addition to the requirements for a commercial applicator's certification, an aerial applicator shall have a current commercial agricultural aircraft operator's certificate issued by the Federal Aviation Administration or show evidence of compliance with 14 CFR Part 137 (relating to agricultural aircraft operations).

(b) Within 12 months of becoming eligible to be certified as a commercial applicator, a person shall file with the Department an application for certification. A person who fails to file an application within this 12-month period will lose certification eligibility and shall again establish eligibility in accordance with §§ 128.41—128.43 (relating to requirements for certification; categories of commercial and public applicators; and determination of competence). An application for initial certification will be accepted from an eligible person throughout the year. A certificate will expire on September 30 following the date of application, except that the Department may issue a certificate for an additional year when an application is initially filed during the last 2 months of the certification year.

(c) Once a certification has expired, no further use of pesticides as allowed by the certification will be permitted. Eligibility for certification shall remain under subsection (b).

(d) If a person allows his certification to expire in the triennial year in which recertification credits are due, recertification shall require completion of delinquent recertification credits as described in § 128.45 (relating to recertification) and satisfaction of the requirements for eligibility of subsection (b).

(e) If a person fails to complete delinquent recertification credits within 1 year from the triennial certification expiration date or fails to renew the certification for any reason during that time period, the person is required to reestablish eligibility by meeting the requirements in § 128.3 (relating to fees), § 128.43 and this section.

§ 128.45. Recertification.

(a) At intervals of 3 years, a certified commercial or public applicator shall provide evidence of having received current update training in technology relating to pesticides in the specific categories in which the applicator is certified to maintain certification. Training will be divided into core and category specific areas as follows:

- (1) *Core.*
 - (i) Safety and health.
 - (ii) Labeling and label comprehension.
 - (iii) Environmental protection.
 - (iv) Equipment use, calibration and dosage calculations.
 - (v) Protective clothing and respirator equipment.
 - (vi) Cleaning and maintaining equipment.
 - (vii) Transportation, storage, security and disposal.
 - (viii) Applicable State and Federal laws.
- (2) *Category specific.*
 - (i) Identification of pests.
 - (ii) Appropriate control measures.
 - (iii) Integrated pest management.

(b) Recertification credits will be given on the basis of attendance at courses or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the "Pennsylvania State Plan for Certification of Pesticide Applicators." This plan has been filed with and approved by the EPA in accordance with FIFRA. Records of training will be maintained by the Department and a yearly statement will be sent to each certified commercial or public applicator describing credits obtained and credits due to meet recertification standards.

(c) Training will be approved based on the following criteria:

- (1) Training shall be conducted or sponsored by an educational institution, an individual, an association, a business or a governmental agency.
- (2) Training shall be approved for recertification credits at the rate of 1 credit per 30 minutes of applicable instruction, exclusive of coffee breaks, lunches, visits to exhibits, and the like.
- (3) Sponsors of recertification training shall submit a written request for course approval to the Department's regional office for the region in which the meeting will be

held. A request to approve out-of-State training shall be submitted to the Department of Agriculture, Bureau of Plant Industry, Health and Safety Division, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted at least 15 working days prior to the training date.

(4) A request for training approval must include the following information:

- (i) The name, address and phone number of the contact person who is coordinating the meeting.
- (ii) The specific location of the meeting.
- (iii) The date and time of the meeting.
- (iv) A listing of the trainers, subject matter and time allotted to each subject.
- (v) The trainer has at least 3 years experience as a certified applicator in the appropriate category or has submitted documentation of other qualifications to serve as a trainer such as educational background.
- (vi) A statement of whether the meeting is opened to the public and if there is a charge to attend.

(5) Statements made in a request to approve training shall be supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(6) Credits will be assigned to each training meeting based upon the subjects covered and the amount of time expended on each subject.

(7) If an employee of the Department is unable to monitor the training, the meeting coordinator is responsible for authenticating attendance and shall compile an approved list of Pennsylvania certified applicators in attendance. The lists shall be returned to the Department within 10-working days following the meeting date and shall include the name of each individual attending and his applicator's certificate number.

(8) Credits assigned may be modified if either the content or time of the actual meeting differs from the original written request for approval.

(9) Falsification by a pesticide business or other course sponsor of information required under this subsection may result in a warning, a fine, suspension and the withdrawal of course approvals as set forth in this section.

(10) A person may not falsify attendance or that of another person's attendance at a recertification meeting. Falsification of attendance at a recertification course by a person may result in a warning, a fine or suspension or revocation of the applicator's certification and require recertification as required under §§ 128.3 and 128.61 (relating to fees; and determination of competence).

PESTICIDE APPLICATION TECHNICIANS

§ 128.51. Training program.

(a) A pesticide application technician shall obtain instruction in, and possess adequate knowledge of, the proper use and handling of pesticides. The training program must include:

- (1) Those areas of knowledge described in section 16.2 of the act (3 P. S. § 111.36b).
- (i) Identification of pests relative to job responsibility.
- (ii) The proper use of pesticides and use of application equipment, including calibration and maintenance equipment used on the job.

(iii) Protective clothing and respiratory equipment required during the application and handling of pesticides.

(iv) Transportation and disposal of pesticides used in and around the workplace.

(v) Applicable State and Federal regulations as they affect the work assignments.

(2) Spill handling.

(3) Human health and environmental effects.

(4) Safety and security.

(b) The technician training program shall include a sufficient level of on-the-job training to allow the technician to competently perform the functions associated with an application of pesticides in which the technician is anticipated to be involved.

(c) A technician is not permitted to make a pesticide application using techniques, pesticides or equipment not included in his training.

(d) A technician shall undergo annual training to assure that his knowledge is adequate for satisfactory completion of his work related duties.

(e) A certified applicator with at least 1 year experience in the categories in which the technician is to be trained shall be responsible for administering the training program. This person shall develop a training program which includes the appropriate level of training needed by the technician to satisfactorily complete work related duties subject to disapproval by the Department.

§ 128.52. Registration.

(a) A business shall submit to the Department a list of persons it intends to register as technicians. The post-marked date or date of receipt will indicate the beginning of a training period to consist of at least 30 calendar days of training.

(b) At the completion of training, the business shall file with the Department an application to register the technician. The application shall be signed by the certified applicator responsible for administering the training program and the technician verifying satisfactory completion of the training program. The annual registration fee shall be submitted with the application.

(c) A registration expires on February 28 each year.

(d) An application for a new registration will be accepted throughout the calendar year. A full year's registration fee will be required for a portion of a year, except that the Department may issue a registration for an additional year when an application is initially filed during the last 2 months of the registration year.

(e) A pesticide application business shall register a technician annually with the Department and shall submit evidence of training, as required by the Department, in addition to the registration fee.

(f) A technician's registration may not be transferred from one business to another.

(g) A technician must be 16 years of age or older at the time of application for registration.

§ 128.53. Recordkeeping.

(a) A pesticide application business employing a technician shall keep records of training provided to meet the requirements of § 128.51 (relating to training program).

(b) The pesticide application business shall keep as part of its records proof of personal identification for all technicians by retaining copies of a photo identification

document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver's license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address. All copies of identification documents must be secured in a manner to prevent identity theft or unauthorized access.

(c) A record required to be kept under this section shall be maintained for at least 3 years and completed in written or printable form no later than 24 hours after the training and shall be made immediately available to the Department upon request.

PRIVATE APPLICATORS

§ 128.61. Determination of competence.

(a) Competency in the use and handling of restricted use pesticides by a private applicator will be determined on the basis of a proctored written examination. The examination will include the following:

(1) Areas of knowledge described in section 17.2 of the act (3 P. S. § 111.37b).

(i) Labeling and label comprehension.

(ii) Safety and health.

(iii) Environmental protection.

(iv) Pests.

(v) Pesticides.

(vi) Integrated pest management.

(vii) Equipment.

(viii) Application techniques and technology.

(ix) Laws and regulations.

(2) Transportation, storage, security and disposal.

(b) An opportunity will be provided to retake an examination if a passing grade has not been achieved.

(c) Only reference materials approved by the Department may be used during the examination.

(d) The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

§ 128.62. Eligibility.

(a) A private applicator will be eligible for a permit upon reaching 16 years of age and fulfilling the requirements of § 128.61 (relating to determination of competence) and subsection (b).

(b) Within 1 year of fulfilling the requirements of § 128.61, a private applicator shall file with the Department an application for a permit accompanied by the appropriate fee. A person who fails to file within this 1 year period shall again establish eligibility under § 128.61.

(c) A private applicator will be issued a numbered permit which shall be used by the applicator when purchasing a restricted use pesticide.

(d) A private applicator with an expired permit may not make an application of a restricted use pesticide (unless the individual is working under the direct supervision of a certified applicator).

§ 128.63. Recertification.

(a) At intervals of 3 years, a private applicator shall have accumulated credits as a result of having received update training approved by the Department in technology relating to the proper and safe use of pesticides to continue as a permitted private pesticide applicator. Training will be divided into core and category specific areas as specified in § 128.45(a) (relating to recertification).

- (1) *Core.*
 - (i) Safety and health.
 - (ii) Labeling and label comprehension.
 - (iii) Environmental protection.
 - (iv) Equipment use, calibration and dosage calculations.
 - (v) Protective clothing and respirator equipment.
 - (vi) Cleaning and maintaining equipment.
 - (vii) Transportation, storage, security and disposal.
 - (viii) Applicable State and Federal laws.
- (2) *Category specific.*
 - (i) Identification of pests.
 - (ii) Appropriate control measures.
 - (iii) Integrated pest management.

(b) Recertification credits will be given on the basis of attendance at meetings or other appropriate training approved by the Department. Training will be evaluated by the Department and assigned credits. A person is required to meet the credit requirements in the *Pennsylvania State Plan for Certification of Pesticide Applicators*. This plan has been filed with and approved by the EPA under FIFRA. Records of training will be maintained by the Department and a yearly statement will be sent to each private applicator describing credits obtained and credits due to meet recertification standards. Training will be approved as described under § 128.45(c).

(c) If a private applicator fails to renew his permit by the date of expiration, renewal requires the following:

- (1) Completion of due recertification credits as described in subsections (a) and (b).
- (2) Completion of the examination requirements as described in §§ 128.3, 128.61 and 128.62 (relating to fees; determination of competence; and eligibility) by the applicator if the due recertification credits are not completed within 1 year from the expiration date of the permit or the permit is expired for more than 1 year for any reason.

(d) Falsification by a pesticide business or other course sponsor of information required under this subsection may result in a warning, fine and suspension or the withdrawal of course approvals as set forth in § 128.45 and this section.

(e) A person may not falsify his attendance or that of another person's attendance at a recertification meeting. Falsification of attendance at a recertification course by a person may result in a warning, fine or suspension or

revocation of the applicator's certification and require recertification as required under § 128.61.

§ 128.64. Fumigation by a private applicator.

(a) A private applicator shall hold a permit in the proper fumigation category to purchase or attempt to purchase or use a restricted use fumigant product.

(b) In addition to the requirements in § 128.61 (relating to determination of competence), a private applicator using commodity and space, or soil fumigants shall demonstrate competence in the proper and safe use of these pesticides. Competency shall be demonstrated by passing a proctored written examination specifically relating to each type of fumigant the applicator intends to use. Only reference materials approved by the Department may be used during the examination. The applicant shall provide to the proctor proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

(c) A special permit will be issued, relating to fumigation, and will be valid for a 3-year period. A fee will not be charged for this special permit. A special permit will not be issued for the use of a fumigant unless the applicant has a private applicator's permit.

(d) Recertification requirements shall be met through attendance at approved meetings and consist of at least two credits of category specific education relating to the appropriate area of fumigation in which the applicator is certified. The credits obtained by a private applicator to meet the requirements of this subsection may also be used to meet the requirements of § 128.63 (relating to recertification).

§ 128.65. Recordkeeping.

(a) A private applicator shall keep for each application of a restricted use pesticide a record containing the following information:

- (1) The date of application. For a restricted use pesticide requiring a reentry time, the date of application must include the hour completed.
- (2) The place of application including the name and address of the farm and the specific field or land area and the crop treated.
- (3) The size of the area treated.
- (4) The brand name of every restricted use pesticide used.
- (5) The EPA product registration number.
- (6) The total amount of every restricted use pesticide used in pounds, ounces, gallons, liters, applied to a treated area.
- (7) The dosage or rate of application of every restricted use pesticide used.
- (8) The names and the permit or certification numbers of the persons making or supervising the application. When applicable, the names of the noncertified applicators acting under the direct supervision of the private applicator shall be recorded.

(b) A record required to be kept under this section shall be maintained for at least 3 years.

(c) Pesticide product and application information shall be made immediately available to medical personnel in an emergency.

(d) A restricted use pesticide application record must be completed in written or printable form no later than 24 hours after the application date and made immediately available to the Department upon request.

RECIPROCITY

§ 128.71. General.

A person who is not a resident of this Commonwealth, but who has a valid license, certificate or permit from another state, may obtain an appropriate Pennsylvania license, certificate or permit if the state in which the person is licensed has a reciprocal agreement with the Commonwealth under section 22 of the act (3 P.S. § 111.42). A license, certificate or permit will be issued under this section only for the initial period of issuance for that eligible category.

§ 128.72. Procedure.

A person desiring a license under § 128.71 (relating to general) shall submit to the Department a properly completed application, the appropriate fee and evidence of financial responsibility as required along with a copy of the person's current license, certificate or permit, proof of having reached the 18 years of age, out-of-State residency and proof of personal identification by presenting a photo identification document issued by an agency of the United States Government or affiliated jurisdiction (that is, state or territory), such as a driver license, valid passport, military identification card or an immigration card; or at least two nonphoto identification documents one of which must be a United States Government issued document bearing the person's signature, such as a Social Security card. The other nonphoto identification documents must identify the holder by name and address.

Subchapter C. PRIOR NOTIFICATION

§ 128.81. Right-of-way application.

(a) *Prior notification required.* A commercial/public applicator may not apply a restricted use pesticide to a right-of-way without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Alternative form of notification.* In lieu of the notification requirements described in subsection (a), an applicator may give prior notification by constructive notification to a person residing in every dwelling unit on land contiguous to the restricted use pesticide application site.

(c) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification and provide the following additional information at least 12 hours prior to the time of application:

- (i) The proposed date and time of the application.
 - (ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.
- (2) Upon written request, the pesticide application business shall, within 10 days of receiving a request

under this subsection, provide a copy of the label for every restricted use pesticide used or to be used.

(d) *Exceptions.* The following types of ground application do not require prior notification:

- (1) Injections internal to utility poles and trees.
- (2) Ground line applications to utility poles.

§ 128.82. Nonagricultural specific site application.

(a) *Prior notification required.* A commercial/public applicator may not make a specific site application of a restricted use pesticide without first giving prior notification by constructive notification to a person residing in every dwelling unit on land contiguous to the application site.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification and provide the following additional information at least 12 hours prior to the time of application:

- (i) The proposed date and time of application.
- (ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(2) Upon written request, the pesticide application business shall within 10 days of receiving a request under this subsection provide a copy of the label for every restricted use pesticide used or to be used.

(c) *Exceptions.* The following types of application do not require prior notification:

- (1) An application of a restricted use pesticide within a detached structure.
- (2) An application of a restricted use pesticide where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or where a soil fumigant is used.

(3) An application of a restricted use pesticide in a tamper resistant bait tray or placed in a rodent burrow which is inaccessible to children or pets.

(4) An application of a restricted use pesticide that is injected into trees or utility poles.

§ 128.83. (Reserved).

§ 128.83a. Agricultural application.

(a) *Prior notification required.* A commercial/public applicator may not apply a restricted use pesticide for an agricultural purpose without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the restricted use pesticide application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification at least 12 hours prior to the time of application, and provide the following additional information:

- (i) The proposed date and time of application.
- (ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(iii) The business name, address and phone number.

(2) The person making a request under this subsection shall identify in the request the name and address of every person operating agricultural land which shares a common border with property resided on by the person making the request.

(3) Upon written request, the pesticide application business shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide used or to be used.

(c) *Alternate forms of notification.*

(1) In lieu of requirements in subsection (a), a pesticide application business may give constructive notification to a person residing in every dwelling unit on land contiguous to the restricted use pesticide application site at least 18 hours prior to the time of application. The pesticide application business shall provide the proposed date and location of the application, the brand name of every restricted use pesticide to be applied including the EPA registration number and the business name, address and phone number.

(2) In lieu of requirements in subsection (a), an applicator may post placards at usual points of entry to the application site and at the borders with adjoining properties owners at least 18 hours prior to the time of application. This placard must remain posted until the conclusion of any restricted reentry time listed on the pesticide label. The placards must be at least 8 1/2 inches by 11 inches in size and be printed with "Public Notice of Pesticide Application" and contain the pesticide application business's name, address, phone number and the brand name of every restricted use pesticide to be applied including the EPA registration number.

(d) *Exceptions.* An application of a restricted use pesticide does not require prior notification where applied directly below the soil surface, except where a well or spring is located within 25 feet of the application site or a soil fumigant is used.

§ 128.84. Nonagricultural area-wide application.

(a) *Prior notification required.* A commercial/public applicator may not make an area-wide application of a restricted use pesticide without first giving prior notification in the form of a notice published in two newspapers of general circulation in the affected area.

(b) *Additional information.*

(1) At least 7 days prior to the proposed application date, a person residing in a dwelling on land contiguous to the application site may request additional information from the pesticide application business. Upon the request, the pesticide application business shall make constructive notification and provide the following information at least 12 hours prior to the time of application.

(i) The proposed date and time of application.

(ii) The brand name of every restricted use pesticide to be applied including the EPA registration number.

(iii) The business name, address and phone number.

(2) Upon written request, the pesticide application business shall, within 10 days of receiving a request under this subsection, provide a copy of the label for every restricted use pesticide used or to be used.

§ 128.85. (Reserved).

§ 128.85a. Ornamental or turf application notification.

(a) *Notification.*

(1) A person who wishes to be notified of future pesticide applications to lawn, turf, ornamental or shade trees on neighboring property shall submit a written request to the licensed pesticide application business that will be making the pesticide application. This notification is limited to applications made by pesticide application businesses operating under pesticide applicator Category 06 or 07 (relating to ornamental and shade trees; and lawn and turf) as described in § 128.32 (relating to categories of business licenses) and limited to neighboring property sharing a mutual property border within 100 feet of the pesticide application site.

(i) This written request for notification must provide the neighboring property owner's name and street address for each neighboring property where a pesticide application may occur and notification is desired.

(ii) The requirement to notify becomes effective 7 days following receipt of the request by the pesticide application business.

(2) Upon receiving a written request for notification at least 7 days prior to the application date, a pesticide application business shall make constructive notification to the requester at least 12 hours prior to the application and provide the following information:

(i) The proposed date and time of application.

(ii) The brand name of every pesticide to be applied including the EPA registration number.

(iii) The business name, address and phone number.

(3) If specifically requested in writing, the pesticide application business shall, within 10 days of receiving a request, provide a copy of the labels for every pesticide used or to be used.

(b) *Expiration of request.* A request for notification made under this subchapter shall expire on December 31 in the year in which it is made.

(c) *Records.* The pesticide application business shall keep records of all requests for notification and records of notifications made for 3 years.

(d) *Exceptions.* An application of a pesticide to a tree by means of injection is not subject to notification.

§ 128.86. (Reserved).

§ 128.87. (Reserved).

§ 128.88. Recordkeeping for prior notification.

(a) The pesticide application business shall keep, for each occasion in which prior notification is required, a record containing the following information:

(1) A copy of the newspaper advertisement or a statement describing other methods of prior notification that this chapter authorizes.

(2) The name and address of every person requesting additional information.

(3) The date and time of individual notification.

(4) A copy of correspondence relating to prior notification or additional information.

(b) A record required to be kept under this section shall be completed in written or printable form no later than

24 hours after the application date, maintained for at least 3 years and be made immediately available to the Department upon request.

Subchapter D. REGISTRATION OF PESTICIDES

§ 128.91. EPA approval required.

(a) Only pesticides which have been approved by the EPA for registration under section 3 of FIFRA (7 U.S.C.A. § 136a) or are permitted to be distributed under a Federal exemption under section 18 or 25(b) of FIFRA (7 U.S.C.A. §§ 136p and 136w(b)) may be registered by the State.

(b) State registration of products sold only under an emergency exemption approved under section 18 of FIFRA will remain in effect only for the period specified by the EPA in granting approval of an exemption, and will require the registrant to provide to the State all information required under 40 CFR 166.32 (relating to reporting and recordkeeping requirements for specific, quarantine and public health exemptions).

(c) Pesticide registration is required for all pesticides exempted from regulation under FIFRA under 40 CFR 152.25(f) (relating to exemptions for pesticides of a character not requiring FIFRA regulation). State registration of products under this exemption will be permitted only when the product labeling, composition, efficacy and risks are consistent with the terms for Federal exemption.

Subchapter E. MISCELLANEOUS

§ 128.101. Reporting of pesticide significant accidents or incidents.

(a) The Secretary has designated the Department as the State agency to which significant pesticide accidents or incidents shall be reported.

(b) A person after becoming aware of a significant pesticide accident or incident or who has knowledge of a significant pesticide accident or incident shall immediately report it to the Department.

(c) As used in this section, the term "significant pesticide accident or incident" means an accident or incident involving a pesticide which requires a person to obtain medical treatment, results in illness requiring veterinary treatment of any wild or domestic animal, results in the unintended death of a human or animal, pollutes the waters of this Commonwealth or causes damage which results in an economic loss of plants, organisms, structures or stored commodities.

(d) A regulated person who following a pesticide application becomes aware of an unexpected adverse effect resulting from the pesticide product when applied in a manner consistent with the label directions shall contact the Department and provide information on the application and its effects.

(e) This section does not supersede the reporting procedures of other statutes or the regulations promulgated thereunder.

§ 128.102. Protected designated areas.

(a) An application of a restricted use pesticide within 100 feet of certain publicly-owned or designated lands will not be permitted unless a waiver is granted by the Secretary. Lands affected by this restriction include:

(1) State forest land designated as a Conservation Area under 17 Pa. Code Chapter 44 (relating to conservation areas) or as a Natural Area or Wild Area under 17 Pa. Code Chapter 27 (relating to State Forest Natural Areas—statement of policy) and State park land design-

nated as a Conservation Area under 17 Pa. Code Chapter 44 or as a Natural Area under 17 Pa. Code Chapter 17 (relating to State Parks Natural Areas—statement of policy).

(2) Areas containing endangered or threatened plant or animal species. These species are listed in 17 Pa. Code §§ 45.12 and 45.13 (relating to Pennsylvania endangered; and Pennsylvania threatened); fish identified in 58 Pa. Code §§ 75.1 and 75.2 (relating to endangered species; and threatened species); and 58 Pa. Code §§ 133.21 and 133.41 (relating to classification of birds; and classification of mammals).

(b) A person may file a request with the Secretary for a waiver of the prohibition contained in subsection (a). The request will contain the following information:

(1) A general statement relating to the purpose and need for the pesticide application.

(2) Specific evaluation of possible detrimental effects on water quality, air quality, groundwater, public health and safety, nontarget plants and animals, habitat diversity and interspersion and biological productivity.

(3) Specific evaluation of expected benefits.

(4) Additional information which may be requested by the Secretary.

(c) A request for a waiver shall be submitted at least 90 days prior to the proposed date of pesticide application.

(d) The Secretary will approve or deny the application within 60 days of receipt of the application.

§ 128.103. Handling, transportation, storage, use and disposal of pesticides.

(a) A person may not use, handle, transport, store, dispose, display or distribute a pesticide in a manner that endangers man or the environment or contaminates food, feed, feed supplements, medications, fertilizers, seed or other products that may be handled, transported, stored, displayed or distributed with the pesticides or otherwise is in conflict with State or Federal laws or regulations.

(b) A person may not use, or cause to be used, a pesticide inconsistent with its labeling (as defined in § 128.2 (relating to definitions)). A pesticide label containing an advisory instruction concerning the use of the pesticide being an environmental hazard shall be considered by the Secretary as a further restriction on the pesticide's use.

(c) An application of a pesticide may not be made where weather conditions are such that it can be expected that the pesticide will move off of the proposed application site.

(d) A person may not dispose of, store or receive for disposal or storage a pesticide, pesticide container or pesticide container residue in a manner that does one or more of the following:

(1) Is inconsistent with its label or labeling.

(2) Causes or allows dumping of pesticides in sewers or surface waters of this Commonwealth, except in conformance with permits issued by the Department of Environmental Protection, the Fish and Boat Commission or other Commonwealth agencies having jurisdiction regarding water pollution.

(3) Violates an applicable State or Federal act or regulation.

(4) Causes or allows the open dumping of pesticides or pesticide containers. All pesticide containers shall be triple rinsed or equivalent pressure rinsed and free of all visible pesticide residues, empty and punctured prior to disposal. Plastic pesticide containers should be offered for recycling or reconditioning where programs are available. If not, they may be disposed of in a permitted sanitary landfill or a permitted commercial incinerator.

(e) A person may not use, or cause to be used, a pesticide inconsistent with its labeling. A pesticide containing an advisory instruction concerning the use of the pesticide subject to the Federal Worker Protection Standard (see 40 CFR Part 170 (relating to worker protection standard)) shall be considered by the Secretary as a further restriction on the pesticide's use.

(f) A business may not directly apply pesticides to the property of another without first obtaining permission of the owner, or occupant having care, custody or control of the property to do so, except in the case of easements or right-of-ways or when done under the direction of a governmental entity to protect the health and welfare of the public.

(g) A person may not use a pesticide in a manner which results in unwanted residues on the property of another, except in the case of easements or right-of-ways or when done under the direction of a governmental entity to protect the health and welfare of the public.

(h) A person may not apply a pesticide unless it has been registered by the Department or it is used under the provisions of an experimental use permit or research conducted under an exemption from an experimental use permit.

(i) A person may not store, transport or otherwise possess a pesticide in a service container unless the service container is legibly marked to indicate the name and percentage of active ingredients and is accompanied by a readily available copy of the registered label that represents the pesticides contained therein. The following exceptions apply:

(1) Service containers containing pesticide end-use dilutions when the containers are used as application devices.

(2) Service containers containing pesticide end-use dilutions which are required by other regulations to have pesticide label information accompany them.

(3) Service containers containing pesticide end-use dilutions when the containers are used as nurse tanks (with a capacity greater than 55 gallons) in the production of an agricultural commodity.

(j) A person may not place or keep a pesticide in a container which has been labeled for food or drink.

§ 128.104. Experimental use permits.

The Department shall be notified by the registrant prior to the use in this Commonwealth of a pesticide with an approved EPA experimental use permit. Notification must include copies of the EPA approval letter, a properly completed product label as defined in 40 CFR 172.6 (relating to labeling) and a list of the participants and cooperators involved in the program.

§ 128.106. Additional responsibilities relating to schools.

(a) *General.* A pesticide may not be applied in a common access area within a school building or on school grounds when students are expected to be in the common access area for normal academic instruction or organized

extracurricular activities within 7 hours following the application. The applicator shall also comply with reentry time restrictions contained on the pesticide label, whichever is greater and the requirements in section 772.2 of the Public School Code of 1949 (24 P.S. § 7.772.2), regarding notification of pesticide treatments at schools.

(b) *Exemptions.* The following type of pesticide applications are exempt from this section.

(1) Disinfectants and Sanitizers.

(2) Self-containerized baits placed in areas not accessible to students.

(3) Gel type baits placed in cracks, crevices or voids.

(4) Swimming pool maintenance chemicals used in the care and maintenance of a swimming pool.

§ 128.107. Providing information upon request.

(a) A producer, distributor or other person shall maintain all books and records as required under section 8 of FIFRA (7 U.S.C.A. § 136f). The records shall be made available for inspection and reproduction when requested by the Department.

(b) Pesticide application business, pesticide dealer or person who handles, distributes, stores, transports or applies any pesticide shall upon request provide to the Department, information about the pesticides including brand name, EPA registration number and active ingredients.

(c) Pesticide application business, pesticide dealer or person who handles, distributes, stores, transports or applies any pesticide shall in an emergency upon request immediately provide to medical personnel information about the pesticides involved including brand name, EPA registration number and active ingredients.

Subchapter F. PESTICIDE HYPERSENSITIVITY REGISTRY

§ 128.111. Registry.

(a) The Department will maintain a list of individuals who have been verified as being hypersensitive to pesticides. The list will be referred to as the Pesticide Hypersensitivity Registry.

(b) Individuals who want to be included on the registry shall have their hypersensitivity to pesticides verified by a physician, and are solely responsible for providing written verification to the Department.

(c) Pesticide-hypersensitive individuals who want to be on the registry shall provide to the Department their name and primary residence including street address, city, state, zip code, county, daytime telephone number and nighttime telephone number. Each individual shall also provide an alternate telephone number where notification information can be conveyed. Individuals may also provide secondary locations, addresses and associated telephone numbers to be maintained as part of their listing. An individual submitting a request for listing less than 2 months preceding the effective date, as described in subsection (e), may not be included on the current registry with that effective date, but will be included in the next registry.

(d) To remain on the registry, an individual shall notify the Department annually during the month of October of the individual's intent to remain on the registry for the next 12 months. Medical verification will not be required for this renewal.

(e) The Department will distribute the current registry to each licensed commercial and public pesticide application business on or before the effective dates of March 1 and July 15 of each year. Individuals will not be considered officially included on the registry unless their names appear on the current registry.

§ 128.112. Notification of hypersensitive individuals.

(a) *General.* Prior to a pesticide application being made by a commercial or public pesticide application business the following conditions shall be met:

(1) Each individual listed on the current registry whose primary residence or secondary locations property line is within 500 feet of the application site shall be notified of the pesticide application.

(2) Notification shall consist of providing the following information to the individual on the registry:

(i) Date, location (application site), earliest possible start time and latest possible finish time of application. The range between start and finish times may be no greater than 24 hours.

(ii) Brand name, EPA number and active ingredient common name (if on the label) of the pesticide products which may be used.

(iii) The name, telephone number and pesticide business license number of the pesticide application business.

(iv) A copy of the label for every pesticide used within 10 days of a written request.

(3) Notification shall be made between 12 hours and 72 hours prior to the pesticide application.

(4) Notification shall be made by telephone, personal contact or certified mail or, if available, electronic mail or facsimile.

(i) Notification requirements are met through constructive notification by contacting the hypersensitive person's daytime or nighttime listings in the register or if the information is given to an adult contacted by dialing the alternate telephone number.

(ii) If notification cannot be made after at least two telephone contact attempts, notification may be made by placing the written notification information on the front door of the listed residence or secondary location listed in the registry within 500 feet of the application site 12 to 72 hours prior to the application.

(iii) A record shall be kept of every contact and contact attempt made under this paragraph.

(b) *Exceptions.* The following types of application do not require notification under this section:

(1) An application of a pesticide within a detached structure not listed as a secondary location.

(2) An application of a pesticide directly below the soil surface.

(3) An application of a pesticide in a tamper-resistant bait station.

(4) An application of a pesticide to a tree or utility pole by means of injection.

(5) An application of a disinfectant or sanitizer.

(6) Application of a pesticide in the care and maintenance of a swimming pool.

(c) *Recordkeeping.* A record of the notification information required under this section, including the time and

method of notification, shall be made within 24 hours following the application and maintained for at least 3 years and shall be made immediately available to the Department upon request.

[Pa.B. Doc. No. 10-2358. Filed for public inspection December 10, 2010, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 287, 290 AND 299]

Beneficial Use of Coal Ash

The Environmental Quality Board (Board) amends Chapters 287 and 299 (relating to residual waste management—general provisions; and storage and transportation of residual waste) and adds Chapter 290 (relating to beneficial use of coal ash) to read as set forth in Annex A. The regulations pertaining to beneficial use of coal ash in Chapter 287, Subchapter H (relating to beneficial use) are rescinded and moved to Chapter 290. Chapter 290 includes requirements for coal ash beneficial use, coal ash certification, water quality monitoring and storage.

This order was adopted by the Board at its meeting of August 30, 2010.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Stephen Socash, Chief, Division of Municipal and Residual Waste, P. O. Box 8472, Rachel Carson State Office Building, Harrisburg, PA 17105-8472, (717) 787-3436; or Susan Seighman, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us.

C. *Statutory Authority*

This final-form rulemaking is authorized under the following statutes:

The Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.101—6018.1003), under section 105(a) (35 P. S. § 6018.105(a)), grants the Board the power and the duty to adopt the rules and regulations of the Department to accomplish the purposes and carry out the provisions of the SWMA. Sections 102(4) and 104(6) of the SWMA (35 P. S. §§ 6018.102 and 6018.104) provide the Department with the power and duty to regulate the storage, collection, transportation, processing, treatment and disposal of solid waste to protect the public health, safety and welfare. Section 508 of the SWMA (35 P. S. § 6018.508) provides the Department with the authority to regulate the beneficial use of coal ash, including establishing siting criteria and design and operating standards governing the storage of coal ash prior to beneficial use and the use and certification of coal ash as structural fill, soil substitutes and soil additives.

The Clean Streams Law (CSL) (35 P.S. §§ 691.1—691.1001), under section 5 (35 P.S. § 691.5(b)), grants the Department the authority to formulate, adopt, promulgate and repeal the rules and regulations that are necessary to implement the CSL. Section 402 of CSL (35 P.S. § 691.402) grants the Department the authority to adopt rules and regulations that require permits or conditions under which an activity shall be conducted when an activity creates a danger of pollution to waters of this Commonwealth or regulation of an activity is necessary to avoid pollution.

Section 4.2(a) of the Surface Mining Conservation and Reclamation Act (SMCRA), (52 P.S. § 1396.4b(a)), authorizes the Board to adopt regulations the Department deems necessary to fulfill the purposes and provisions of the SMCRA. Section 4(a) of the SMCRA (52 P.S. § 1396.4(a)) authorizes the Department to charge and collect a reasonable filing fee from persons submitting applications for a surface mining permit to cover the costs of reviewing and administering permits. Section 3.2 of the Coal Refuse Disposal Control Act (CRDCA) (52 P.S. § 30.53b), grants the Board the power and duty to adopt regulations to accomplish the purposes of the CRDCA. Section 5(b) of the CRDCA (52 P.S. § 30.55(b)) authorizes the Department to charge and collect a reasonable filing fee from persons submitting applications for a coal refuse disposal permit.

Section 1917-A of The Administrative Code of 1929 (71 P.S. § 510-17) authorizes and requires the Department to protect the people of this Commonwealth from unsanitary conditions and other nuisances, including any condition that is declared to be a nuisance by any law administered by the Department. Section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20) grants the Board the power and duty to formulate, adopt and promulgate rules and regulations as may be determined by the Board for the proper performance of the work of the Department.

D. Background of the Final-Form Rulemaking

This final-form rulemaking incorporates the key provisions of the Department's policies and procedures on the beneficial use of coal ash. The key provisions address the general and specific operating requirements for beneficial use, which include certification guidelines for the chemical and physical properties of coal ash beneficially used at active and abandoned mine sites. These provisions also relate to water quality monitoring and the storage of coal ash in piles and surface impoundments. This final-form rulemaking also adopts recommendations by the National Academy of Sciences in their 2006 report entitled *Managing Coal Combustion Residues in Mines*.

There are hundreds of thousands of acres of mine lands in this Commonwealth that need to be reclaimed. These lands contain many dangerous pits and highwalls that have caused the deaths of numerous citizens over the years. The use of coal ash to reclaim these mines eliminates the dangers associated with the open pits and highwalls and restores a safe environment. Reclamation also restores positive drainage to watersheds by allowing rain water to flow on the surface to streams, rather than infiltrating into spoil or deep mines from which it discharges as acid mine drainage. Reclamation of these lands cannot be accomplished fully through Federal and State funds that are currently available for this purpose. Therefore, a program that allows for the beneficial use of coal ash for mine reclamation in an environmentally responsible manner will allow for the continued reclamation of mine sites and protect the public health and safety and the environment.

The Department has been involved successfully with mine reclamation using coal ash for approximately 25 years. Information on several mine reclamation projects is in the 2006 report entitled *Coal Ash Beneficial Use in Mine Reclamation and Drainage Remediation in Pennsylvania*, which was a collaborative effort between the Department and the Materials Research Institute at the Pennsylvania State University.

In addition to unreclaimed mines, more than 2 billion tons of waste coal piles are scattered across the anthracite and bituminous coal regions in this Commonwealth. These piles can cause several different types and degrees of adverse impacts on the environment. Waste coal piles produce some of the most severe mine drainage in this Commonwealth, often having a pH less than 3.0 and acidity in the hundreds to thousands of milligrams per liter, and are also a troublesome source of sediment that has impacted hundreds of miles of stream. Stormwater runoff from waste coal piles also carries large loads of metals including iron, manganese, zinc, nickel, arsenic and cadmium. Finally, waste coal piles can catch fire and produce noxious fumes.

The use of waste coal to fuel power plants has assisted in the elimination of these waste coal piles and remedied the potentially harmful conditions resulting from the continued existence of the piles. To date, 145 million tons of waste coal have been used to fuel power plants. Annually, 10% of power in this Commonwealth is produced from power plants burning waste coal. The ash that is generated from the waste coal has been used to reclaim thousands of acres of abandoned mines. The Anthracite Region Independent Power Producer's Association (ARIPPA), an association of independent power producers, places a value of at least \$90 million worth of reclamation that has been achieved at abandoned mine sites by the coal and power industries through the burning of waste coal and subsequent reclamation with the coal ash that was generated. Additionally, the Department has observed numerous instances where removal of the piles and reclamation has significantly reduced pollutant loads for metals, such as arsenic, zinc, nickel, iron and manganese.

Prior to this final-form rulemaking, the beneficial use of coal ash, including abandoned and active mine reclamation, was managed through existing residual waste regulations and Department technical guidance. In 2008, the Department proposed amendments to the technical guidance documents "Mine Site Approval for the Beneficial Use of Coal Ash," Document No. 563-2112-225, and "Certification Guidelines for the Chemical and Physical Properties of Coal Ash Beneficially Used at Mines," Document No. 563-2112-224. The most frequent comment received during the public comment period on these amendments was that the content of the technical guidance should be placed in regulations rather than Department technical guidance. The Board agreed with the commentators and included the key provisions of the technical guidance in this final-form rulemaking and further enhanced the existing residual waste regulations regarding the beneficial use of coal ash.

The citizens of this Commonwealth will be better served by this final-form rulemaking, which is summarized as follows: increased coal ash monitoring to ensure coal ash meets qualification criteria; increased water quality monitoring for a longer duration to create a robust dataset to facilitate the evaluation and documentation of water quality at sites where coal ash is beneficially used; a requirement for minimum number of moni-

toring wells to characterize the groundwater or other water quality points; a requirement for recording a landowner consent for placement of coal ash for beneficial use; improved reporting requirements to track volumes and location of sites where coal ash is beneficially used; consistent operational and monitoring standards for all types of beneficial use; a centralized process to qualify coal ash for beneficial use at mine sites; an annual fee payable to the Department to offset some of its costs for coal ash and water quality sampling and testing at mine sites where coal ash is beneficially used; and requirements for the storage of coal ash including provisions for design and operations.

Persons who generate coal ash with the intention of qualifying it for beneficial use and persons who utilize that ash will be required to comply with this final-form rulemaking. Currently, there are about 50 mine sites across this Commonwealth that are actively using ash under the beneficial use provisions. At any given time, there can be as many as 60 approved ash sources. Sources include large multiunit pulverized coal power plants and fluidized bed combustion (FBC) power plants that can produce hundreds of thousands of tons of ash per year and small industrial power plants that may produce less than 10,000 tons per year. The FBC plants, which burn waste coal, have traditionally used 100% of their ash for mine reclamation. A stated goal of the 43 coal-fired electricity producers in this Commonwealth is to find more ways to beneficially use the coal ash produced at their facilities.

For each of the past several years, about 11 million tons of coal ash has been used for mine reclamation. To date, approximately 20 surface mine sites have been reclaimed using coal ash. In 2008, approximately 11 projects, other than mine reclamation, used coal ash structural fill to construct roadways, an airport runway in Snyder County and a golf course in York County. Many municipalities in this Commonwealth beneficially use bottom ash as antiskid material in the winter months. Currently, eight facilities qualify under a general permit to beneficially use the coal ash produced at that facility as construction material at sites other than mine sites.

The Bureaus of Waste Management, Mining and Reclamation, District Mining Operations and Abandoned Mine Reclamation collaborated to produce this final-form rulemaking. The Bureau of Mining and Reclamation met with industry groups in 2008 representing both the corporate energy facilities and the independent power producers, including Reliant Energy, PPL and ARIPPA, and individually with various plant operators by request. The Department also provided information to the Pennsylvania Coal Association and the Pennsylvania Anthracite Council. The Department typically maintains discussions with the American Coal Ash Association and had several meetings with citizens representing Earthjustice and the Environmental Integrity Project. The concepts in this final-form rulemaking, in the form of technical guidance, were presented to the Mining and Reclamation Advisory Board and published at 38 Pa.B. 5228 (September 20, 2008). Comments received from industry, citizenry and Department staff were used in the development of this final-form rulemaking. Finally, this final-form rulemaking was presented to the Solid Waste Advisory Committee in May 2010. Draft final regulations were also presented to the Citizens Advisory Council in June 2010.

E. Summary of Regulatory Requirements

§ 287.1

The final-form rulemaking amends the definitions of “coal ash,” “solid waste” and “structural fill” to provide clarity.

The proposed definition of “water table” was moved to Chapter 290 since the term is only used in that chapter.

§§ 287.661—287.666

The final-form rulemaking rescinds §§ 287.661—287.666. Chapter 290, Subchapter B (relating to beneficial use of coal ash) replaces these sections.

Subchapter A. General

Final-form § 290.1

The definition of “temporary coal ash storage pile” was added to the final-form rulemaking to allow relief from siting restrictions for storage piles that only exist for periods of less than 2 weeks.

Final-form § 290.2

Subsection (a) establishes that this chapter applies to the beneficial use of coal ash. It also establishes that fly ash, bottom ash or boiler slag that does not meet the beneficial use requirements (including the performance standards) of this chapter is a residual waste.

Subsection (b) specifies that beneficial use of coal ash mixed with residual waste will be authorized by a residual waste permit and meet the requirements of this chapter. The requirements for ash produced by co-firing coal and alternative fuels was moved to subsection (c) and revised to not require a residual waste permit in all cases.

Subsection (c) was added to the final-form regulation to allow ash produced by co-firing an alternative fuel with coal or waste coal as if it were coal ash, provided the alternative fuel is less than 20% of the total fuel and contributes less than 10% to the total quantity of ash. This change was made to encourage use of alternative fuels and may help offset some of the increased cost to industry due to additional analysis and monitoring required in the final-form rulemaking.

Subsection (d) specifies that beneficial use of coal ash mixed with construction and demolition waste will be authorized by a municipal waste permit and meet the requirements of this chapter.

Subsection (e) specifies that coal ash mixed with municipal waste, other than construction and demolition waste, must not be beneficially used by direct placement into the environment. Other beneficial uses may be authorized by a municipal waste permit.

Subsection (f) establishes that beneficial use of coal ash under this chapter does not require a disposal permit.

Subchapter B. Beneficial Use of Coal Ash

Final-form § 290.101

Subsection (a) establishes that use of coal ash under this chapter does not require a disposal permit.

Subsection (b) in the final-form regulation identifies the beneficial use that requires a chemical analysis of the coal ash.

Subsection (c) specifies that the physical characteristics required for certification for the intended beneficial use of the coal ash in Chapter 290, Subchapter C (relating to coal ash certification) must be met.

Subsection (d) establishes that a water quality monitoring plan is required for any structural fill, use at a mining activity site or use at an abandoned surface coal mine site involving use of more than 10,000 tons of coal ash per acre or more than 100,000 tons in total per site. The final-form regulation allows the Department to require a water quality monitoring plan where lesser amounts of coal ash are to be beneficially used or coal ash is used for other beneficial uses.

Subsection (e) specifies that coal ash may not be placed within 8 feet of the water table. The final-form regulation has been revised to limit placement within 8 feet of the water table when coal ash is used for mine subsidence control, mine fire control and mine sealing.

Subsection (f) specifies that coal ash may not be used in ways that may cause water pollution.

Final-form § 290.102

Subsection (a) establishes the requirements for a written proposal for coal ash to be used as structural fill. The term was modified in the final-form regulation from "written notification" to "written proposal" to avoid confusion with public notice requirements. This written proposal includes a description of the project, including maps, estimated project starting and completion dates, construction plans, estimated volume of coal ash to be utilized, chemical analysis and landowner consent. The landowner consent is a recordable document for projects involving use of more than 100,000 tons in total per site or 10,000 tons of coal ash per acre. The 100,000 tons per project trigger for a written proposal was added in the final-form regulation to be consistent with other sections of this chapter.

Subsection (b) specifies that public notices in local newspapers must be published for coal ash structural fill projects involving use of more than 10,000 tons of coal ash per acre or more than 100,000 tons in total per site. The notice must include name and business address, a brief description of location and scope of the project and the Departmental office location where the request was sent. Notification to the local municipality has been added to the final-form regulation.

Subsection (c) allows the Department to require public notice for projects less than 10,000 tons per acre and less than 100,000 tons per project when there is significant public interest or site conditions warrant notification.

Subsection (d) establishes that the Department will publish a notice in the *Pennsylvania Bulletin* of each written proposal received for use of coal ash as structural fill.

Subsection (e) establishes that the Department will respond in writing to the notifier as to whether their final-form use is consistent with this section.

Subsection (f) establishes additional requirements for coal ash used as structural fill, including compaction and layer thickness, runoff minimization and stormwater management, surface water diversion, cover, minimum compaction and dust minimization. The final-form regulation has been revised to indicate that the pH must be 7.0 or above for coal ash used as structural fill to be consistent with other sections in Chapter 290. In addition, the upper pH limit for use as structural fill only applies when public access is not restricted during storage or placement. The requirement that the Proctor Test be conducted by a certified lab has been dropped because the Department was unable to find an organization that certifies labs for that procedure.

Subsection (g) establishes siting restrictions for structural fill, including distances from streams, water sources, bedrock outcrops, sinkholes and areas draining into sinkholes, floodplains and wetlands. A siting restriction of 300 feet from exceptional value waters and high quality waters was added to protect these special protection waters.

Subsection (h) establishes annual reports required for projects involving use of more than 10,000 tons of coal ash per acre. The report must include contact information, site location, identity of each source of coal ash and the volume and weight of coal ash from each source. The final-form regulation also requires this report for projects involving more than 100,000 tons of coal ash in total per site to be consistent with the requirements in other sections.

Subsection (i) was added to the final-form regulation to require the person beneficially using coal ash as structural fill to notify the Department within 72 hours of any evidence that the coal ash may not meet the chemical limits or physical property requirements in § 290.201 (relating to coal ash certification). This requirement was moved from Chapter 290, Subchapter C to Chapter 290, Subchapter B to clarify that it applies to the end user. The time frame was added to clarify that this notification should occur quickly after the evidence is discovered by the end user.

Final-form § 290.103

Proposed subsection (a), which established that coal ash may be beneficially used as a soil substitute or soil amendment without a permit if the user complies with this section, was deleted in the final-form regulation because it is addressed in § 290.101(a) (relating to general requirements for beneficial use).

Subsection (a) establishes the written proposal requirements for coal ash to be used as a soil substitute or soil amendment. This written proposal includes a description of the project, including maps, estimated project starting and completion dates, construction plans, estimated volume of coal ash to be utilized, chemical analysis of the coal ash and soil at placement site, an analysis showing the coal ash will be beneficial to productivity or soil properties and landowner consent.

Subsection (b) establishes that the Department will respond to the notifier in writing as to whether their final-form use is consistent with this section.

Subsection (c) establishes additional requirements for coal ash used as a soil substitute or soil amendment, including coal ash and soil pH, calcium carbonate equivalency, surface runoff minimization and stormwater management, surface water diversion, application rate, protection of biota and dust minimization. It specifies that coal ash must be either incorporated within 24 hours or stored in accordance with Chapter 290, Subchapter E (relating to coal ash storage).

Subsection (d) establishes siting restrictions for coal ash used as a soil substitute or soil amendment, including distances from streams, water sources, occupied dwellings, sinkholes and areas draining into sinkholes and wetlands. A siting restriction of 300 feet from exceptional value waters and high quality waters was added to protect these special protection waters.

Subsection (e) establishes cumulative contaminant loading rates for coal ash used as a soil substitute or soil amendment.

Subsection (f) adds recordkeeping requirements to the final-form regulation. The items subject to recordkeeping include chemical analysis and quantity of coal ash utilized, which are necessary to determine cumulative loading rates, as well as source of the coal ash and placement location.

Subsection (g) was added to the final-form regulation to require the person beneficially using coal ash as a soil amendment or soil substitute to notify the Department within 72 hours of any evidence that the coal ash may not meet the chemical limits or physical property requirements in § 290.201. This requirement was moved from Chapter 290, Subchapter C to Chapter 290, Subchapter B to clarify that it applies to the end user. The time frame was added to clarify that this notification should occur quickly after the evidence is discovered by the end user.

Final-form § 290.104

Subsection (a) establishes the laws and regulations upon which this section is based.

Subsection (b) establishes the procedures for requesting beneficial use of certified coal ash at a specific mine site.

Subsection (c) establishes the amount of the permit filing fee for permits that will be beneficially using coal ash and where the money will be deposited. This fee was reduced from \$2,000 to \$1,000 per year after final placement of coal ash at the site. The costs to monitor sites incurred by the Department after completion of coal ash placement are expected to be less than the costs during active placement.

Subsection (d) establishes a requirement for public notice.

Subsection (e) establishes appropriate beneficial uses for coal ash at active coal mine sites.

Subsection (f) establishes operational requirements for beneficial use of coal ash at active coal mines. The final-form regulation allows a greater quantity of ash to be beneficially used at a site if the operator can demonstrate that the greater quantity will enhance the reclamation or improve water quality. In addition, the greater quantity may be utilized at a site that is part of a multiple-site project involving multiple coal refuse reprocessing sites. The requirement to run the Proctor Test on each source of coal ash was dropped from the final-form regulation. The requirement that the Proctor Test be conducted by a certified lab was also dropped in the final-form regulation because the Department was unable to find an organization that certifies labs for that procedure.

Subsection (g) establishes operational requirements for beneficial use of coal ash when used as a soil substitute or soil additive.

Subsection (h) establishes operational requirements for the beneficial use of coal ash at coal refuse disposal sites.

Subsection (i) establishes the requirement for mine site monitoring of coal ash. The final-form regulation allows for a reduced coal ash sampling frequency for end users where the coal ash being utilized is from a single source and the source is close to the placement area.

Subsection (j) establishes annual reporting requirements pertaining to the amount and sources of ash used at a mine site.

Subsection (k) was added to the final-form regulation to require the person beneficially using the coal ash at a mining activity site to notify the Department within 72 hours of any evidence that the coal ash may not meet the

certification requirements in § 290.201. This requirement was moved from Chapter 290, Subchapter C to Chapter 290, Subchapter B to clarify that it applies to the end user. The time frame was added to clarify that this notification should occur quickly after the evidence is discovered by the end user.

Final-form § 290.105

The term “abandoned coal surface mine” has been changed to “abandoned mine lands” to provide clarity. “Abandoned mine lands” is defined in § 86.252 (relating to definitions).

Subsection (a) establishes procedures and requirements for the use of coal ash at abandoned mine lands. The final-form regulation requires the approval to be under a contract with the Department. The Department does not have the authority to issue approvals without a contract for reclamation of abandoned mine lands.

Subsection (b) establishes the elements required in a contract proposal to use coal ash at abandoned mine lands.

Subsection (c) includes a requirement to publish a public notice in local newspapers of the final-form use of coal ash at abandoned mine lands involving use of more than 10,000 tons of coal ash per acre or more than 100,000 tons in total at any site. The final-form regulation also includes notification to the local municipalities.

Subsection (d) establishes that the Department will publish a notice in the *Pennsylvania Bulletin* of each approved use of coal ash at abandoned mine lands.

Subsection (e) establishes additional requirements for coal ash used at abandoned mine lands including: maximum slope of the reclaimed area; compaction and layer thickness; runoff minimization and stormwater management; surface water diversion; cover; minimum compaction; dust minimization; minimum distances for ash placement from streams, water sources, sinkholes and areas draining into sinkholes; floodplains; and requirements for the beneficial use of coal ash as a soil substitute or soil additive at abandoned mine lands. The pH range was dropped in the final-form regulation as it conflicted with the pH limitation in § 290.201.

Subsection (f) establishes the annual reporting requirements pertaining to the amount and sources of coal ash used at abandoned mine lands.

Subsection (g) was added to the final-form regulation to require the person beneficially using coal ash at abandoned mine lands to notify the Department within 72 hours of any evidence that the coal ash may not meet the certification requirements in § 290.201(a). This requirement was moved from Chapter 290, Subchapter C to Chapter 290, Subchapter B to clarify that it applies to the end user. The time frame was added to clarify that this notification should occur quickly after the evidence is discovered by the end user.

Final-form § 290.106

Proposed subsection (a), which established that coal ash may be beneficially used as a soil substitute or soil amendment without a permit if the user complies with this section, was deleted from the final-form regulation, since it is addressed in § 290.101(a).

Subsection (a) identifies specific other uses of coal ash and requirements for storage and use. These other uses of coal ash include use in concrete, extraction or recovery of materials and chemicals from coal ash, use of fly ash as a stabilized product, use of bottom ash or boiler slag as

antiskid or surface preparation material, use of coal ash as a raw material for a product with commercial value, use as pipe bedding and use for mine subsidence control, mine fire control and mine sealing. The final-form regulation adds use in cement and use of coal ash as fuel to the other beneficial uses.

The use as a stabilized product has been modified in the final-form regulation to indicate that if the stabilized product is used as structural fill or as a soil amendment or soil substitute, it must also meet the requirements in §§ 290.102 or 209.103 (relating to use as structural fill; and use as a soil substitute or soil additive), respectively. The use of coal ash as drainage material has been deleted from the final-form regulation since this involves contact with water and the intent with the final-form regulation is to minimize contact with water.

The use of coal ash for mine subsidence control, mine fire control and mine sealing in the final-form regulation requires the person beneficially using coal ash to demonstrate that its use will not cause groundwater contamination. Since these particular uses may be within 8 feet of the water table, the final-form regulation requires the coal ash to undergo cementitious reaction after placement.

The final-form regulations allow beneficial use of coal ash with a minimum heating value of 5,000 Btu per pound as a fuel.

Subsection (b) was added to the final-form regulation to require the person beneficially using coal ash for these other beneficial uses to notify the Department within 72 hours of any evidence that the coal ash may not meet the appropriate chemical standards or physical property requirements in § 290.201(a). This requirement was moved from Chapter 290, Subchapter C to Chapter 290, Subchapter B to clarify that it applies to the end user. The time frame was added to clarify that this notification should occur quickly after the evidence is discovered by the end user.

Final-form § 290.107

Subsection (a) requires persons beneficially using coal ash to provide documentation and information to demonstrate compliance with this subchapter upon the Department's request.

Subsection (b) establishes that failure to have documentation of compliance with this subchapter may lead to a presumption that the person is disposing residual waste without a permit.

Subchapter C. Coal Ash Certification

Final-form § 290.201

Subsection (a) establishes the chemical and physical certification standards for coal ash to meet beneficial use requirements. Chemical leaching standards are established. Low permeability standards are established for ashes that will be used as low permeability material. The final-form regulation allows addition of cement or lime to meet the standards and require disclosure of their addition in the certification request. Minimum calcium carbonate equivalence standards are established for ashes that will be used for alkaline addition. The final-form regulation has lowered the standard for selenium due to an indication from monitoring data that selenium leachability is higher than predicted based on the modeling used to develop standards for other species. Monitoring data has not indicated that there is environmental harm from sulfate when coal ash is beneficially used; therefore, the sulfate standard has been increased in the final-form

regulation. The standard for fluoride has been dropped in the final-form regulation, as the Department has insufficient data to determine what an appropriate fluoride standard should be or if it is even necessary. Fluoride determinations in the coal ash and water quality monitoring remain a requirement of these regulations and the data generated will allow the Department to address this issue in a future rulemaking, if necessary.

Proposed subsection (b), establishing certification exceptions for ashes that meet primary Maximum Contaminant Level (MCL) parameters, but fail to meet a secondary MCL parameter, has been deleted in the final-form rulemaking. The exceptions require a site-specific evaluation and are not appropriate for Statewide certification.

Subsection (b) in the final-form rulemaking establishes informational requirements to be provided by the coal combustion waste generator, including sampling and analysis of the ash. The final-form regulation clarifies that it is the generator that can request certification and that only the pollution control devices that can impact the chemical or physical properties of the ash need to be identified in the request. The final-form regulation allows the Department to require a different leaching procedure than the specified EPA Method 1312 if other leaching procedures become available that more accurately predict the leaching behavior of coal ash.

Subsection (c) establishes that the Department will provide written notification to the generator of the Department's decision on whether the generator's coal combustion waste is certified. If the certification requirements are met, the Department will provide a certification identifier. The term was changed from "certification identification number" to "certification identifier" in the final-form regulation because the identifier is alphanumeric.

Subsection (d) establishes coal combustion waste monitoring requirements. The final-form regulation clarifies that reanalysis is required when a change in the fuel source exists that could alter the chemical characteristic or physical properties of the coal combustion waste that could adversely impact beneficial use.

Subsection (e) requires the generator of the coal combustion waste to notify the Department of any changes that may affect the coal ash certification. In the final-form regulation, notification by the person beneficially using the coal ash to has been moved to the individual beneficial uses in Chapter 290, Subchapter B, since Chapter 290, Subchapter C applies to generators.

Final-form § 290.202

Subsection (a) establishes procedures for revoking coal ash certification for coal combustion waste that fails to meet certification requirements. The final-form regulation clarifies that certification will be revoked if the generator fails to demonstrate that any exceedance was due to laboratory error or an anomalous result.

Subsection (b) establishes that coal combustion waste with a revoked certification cannot be used at mine sites.

Subsection (c) establishes the procedures for recertifying a revoked coal combustion waste, including resampling and establishing adequacy of chemical and physical properties.

Final-form § 290.203

This section establishes procedures when exceedances of certification standards occur. The final-form regulation requires the generator to submit documentation within 30

days to demonstrate that any exceedence was due to laboratory error or an anomalous result.

Subchapter D. Water Quality Monitoring

Final-form § 290.301

Subsection (a) establishes that water quality monitoring plans must be submitted to the Department for approval. The specific citations to when a plan is required have been replaced by the more general reference to Chapter 290.

Subsection (b) establishes the content of water quality monitoring plans, including the location and design of upgradient and downgradient monitoring points, provisions for background sampling prior to placement of coal ash and quarterly sampling after approval. The final-form regulation does not allow the Department to reduce the number of monitoring points or the frequency of water quality monitoring.

Subsection (c) establishes sources of quality assurance/quality control procedures for sampling and in the laboratory.

Subsection (d) establishes sources of analytical methods used for water quality monitoring and that the laboratory must be accredited.

Subsection (e) specifies the nonmetal parameters to be determined in water monitoring samples. The final-form regulation requires measurement of pH in both the field and laboratory.

Subsection (f) specifies the metal parameters to be determined in water monitoring samples and that water elevation at monitoring point be recorded.

Subsection (g) gives the Department the ability to require additional parameters based on site conditions. The final-form regulation also gives the Department the ability to require additional parameters based on characteristics of the coal ash.

Subsection (h) specifies the minimum frequency and duration of water quality monitoring and allows the Department to require more frequent or longer water quality monitoring if results indicate contamination may be occurring.

Subsection (i) specifies the frequency that water quality monitoring data is to be submitted to the Department. The final-form regulation indicates that this data must be submitted quarterly until 5 years after final placement when the frequency is reduced to annually for 5 additional years.

Subsection (j) establishes that attainment with ground-water remediation standards must be demonstrated if there is water degradation due to placement of coal ash.

Final-form § 290.302

Subsection (a) establishes parameters for the location and number of upgradient and downgradient groundwater monitoring points and that surface water monitoring points must be approved by the Department. The final-form regulation allows the Department to require upstream surface water monitoring where downstream surface water monitoring is required.

Subsection (b) establishes that the number, location and depth of monitoring points must be representative of water quality and located so as not to interfere with site operations. The subsection also specifies the maximum distance from the coal ash placement site. The final-form regulation allows the maximum distance to be measured from the coal ash placement site or the mining activity

area since the maximum distance from the placement area could be in the active mining area. It would be difficult to maintain the integrity of a monitoring well in an area where active mining is occurring. The final-form regulation allows the Department to approve monitoring points at greater distances if their locations are better for water quality monitoring purposes.

Subsection (c) establishes that upgradient monitoring points be located where they will not be affected by coal ash placement.

Subsection (d) establishes that downgradient monitoring points be located where they will not be affected by coal ash placement.

Subsection (e) establishes that well drillers shall be licensed.

Subsection (f) specifies that well construction materials be decontaminated prior to installation.

Final-form § 290.303

Subsection (a) establishes well standards, including casing, diameter, screening, filter packing, visibility above ground, and annular space sealing and must be designed to prevent cross contamination. The section also allows alternative casing designs for wells located in stable formations. The final-form regulation allows the Department to approve alternatives to the filter packing requirements since filter packing is not possible when the monitoring well is within a mine void. The requirement for the monitoring wells to be clearly visible due to concerns with vandalism has been deleted in the final-form regulation.

Subsection (b) establishes standards for protective casings around well casings, including strength, length above and below surface of ground, collar and grouting, labeling, protrusion above well casing, locked cap and material of construction. The requirement for the monitoring wells to be painted in a highly visible color due to concerns with vandalism has been deleted in the final-form regulation.

Final-form § 290.304

Subsection (a) establishes when an assessment plan is to be submitted based on monitoring data or data from public or private water supplies. The final-form regulation clarifies that the changes in water quality that trigger the requirement for an assessment must be statistically significant degradation, not just any change. The methods for determining whether a change is statistically significant are specified by incorporating 40 CFR 258.53(g) and (h) (relating to ground-water sampling and analysis requirements) by reference.

Proposed subsection (b) indicated an assessment is not required if resampling shows degradation is not occurring or if degradation is a result of seasonal variation or activities unrelated to coal ash placement. In the final-form regulation, the assessment is limited to data and a supporting narrative if it can be demonstrated that the degradation is a result of one of those reasons.

Subsection (c) establishes the elements of an assessment plan, including monitoring point location, design and construction information, sampling and analytical methods to be used, an implementation schedule and identification of the abatement standard. The final-form regulation gives the Department the ability to require biological assessment of surface water as part of the assessment plan.

Subsection (d) establishes Department approval and notification of public and private water supplies.

Subsection (e) establishes report contents, including data, analysis and recommendations.

Subsection (f) establishes procedures for submission of a revised water quality monitoring plan when an abatement plan is not required.

Subsection (g) establishes that the Department may require abatement or water supply replacement prior to or concurrent with the assessment.

Final-form § 290.305

Subsection (a) requires that an abatement plan be submitted to the Department when certain conditions exist. An abatement plan is required when an assessment indicates groundwater or surface water degradation and the analysis under subsection (c) indicates that an abatement standard will not be met at the compliance points. A plan is also required when data from the Department or other person from one or more compliance points indicates an abatement standard has been exceeded. The final-form regulation also requires abatement if a biological assessment of surface water indicates a detrimental effect on biota.

Subsection (b) establishes the elements of an abatement plan, including identification of the specific methods or techniques to be used to abate degradation and to prevent future degradation and an implementation schedule.

Subsection (c) establishes standards for abatement. In the final-form regulation, “permitted” was deleted from “permitted coal ash placement area” because only coal ash placement at mining activity sites require a permit. The guidelines used to assess health risk have been clarified in the final-form regulation by referencing the Department’s Land Recycling Program Technical Guidance Manual. Flexibility has been built in by allowing use of other standard procedures commonly used in the environmental field.

Subsection (d) allows a compliance point to be set for secondary contaminants beyond 500 feet on land owned by the owner of the coal ash placement area.

Subsection (e) establishes a time limit for completion and submittal of abatement plans.

Subsection (f) establishes that the Department may modify inadequate plans.

Subsection (g) establishes a time frame for implementation of the abatement plan after approval.

Subsection (h) establishes orders that may be issued by the Department if an abatement plan is found to be inadequate after approval or implementation.

Final-form § 290.306

This section establishes recordkeeping requirements for water quality monitoring data.

Final-form § 290.307

This section is new in the final-form rulemaking. Paragraph (1) establishes water quality monitoring requirements and transition times for sites where coal ash has been and will continue to be beneficially used or stored that were previously not subject to water quality monitoring.

Paragraph (2) establishes water quality monitoring requirements and transition times for sites where coal ash has been and will continue to be beneficially used or stored that were previously subject to water quality monitoring.

Subchapter E. Coal Ash Storage

Final-form § 290.401

Subsection (a) establishes that best engineering design and construction practices are to be used for all phases of construction and operation.

Subsection (b) specifies that coal ash storage is not to exceed the design capacity of the storage facility.

Subsection (c) specifies that the Department may require a water quality monitoring system to be installed if coal ash storage has the potential to cause groundwater degradation.

Subsection (d) specifies that the person storing coal ash shall periodically inspect the storage facility for evidence of failure and take any necessary immediate corrective actions. Records of inspections and corrective actions are to be maintained for 3 years.

Final-form § 290.402

Subsection (a) specifies general maximum storage time limits. The final-form regulation clarifies what is meant by “previous year” by adding that the year begins on January 1st. In the final-form regulation, proposed subsection (c) is incorporated into this subsection.

Proposed subsection (b), which specified a maximum storage time limit for bottom ash, was deleted from the final-form regulation.

Subsection (b) in the final-form rulemaking establishes that a person storing coal ash in a manner contrary to subsection (a) is presumed to be operating a disposal facility.

Subsection (c) establishes operational record storage retention to overcome the presumption of disposal in subsection (a) or (b).

Proposed subsection (f) was deleted as being unnecessary.

Final-form § 290.403

Subsection (a) specifies minimization of surface water runoff from storage areas and stormwater management.

Subsection (b) specifies minimization of surface water run-on to storage areas.

Subsection (c) specifies that coal ash is not to be stored in a manner to cause degradation of groundwater. The final-form regulation expands this to include surface water protection.

Final-form § 290.404

Subsection (a) establishes siting restrictions for coal ash storage other than in surface impoundments. Restrictions include distances from streams, water sources, bedrock outcrops, sinkholes and areas draining into sinkholes, and wetlands. Siting restrictions for exceptional value waters and high quality waters have been added in the final-form regulation since these are considered special protection waters. These siting restrictions do not apply when coal ash storage is totally enclosed and on an impermeable floor.

Subsection (b) establishes siting restrictions for coal ash storage in surface impoundments. Restrictions include distances from floodplains, streams, water sources, bedrock outcrops, occupied dwellings, property lines, sinkholes and areas draining into sinkholes, wetlands, schools, parks and playgrounds and areas underlain by limestone or carbonate formations or areas serving as habitat for endangered or threatened flora or fauna.

Siting restrictions for exceptional value waters and high quality waters have been added, since these are considered special protection waters. The provision for waiver of the siting restriction from public or private water sources by the owner of the water supply in the proposed regulation has been revised to only allow the waiver for private water sources in the final-form regulation. The waiver language for the distance from a school building, park or playground was deleted from the final-form regulation.

Subsection (c) has been added to the final-form regulation to establish siting restrictions for temporary coal ash storage piles (less than 2 weeks in duration). Restrictions include distances from streams and wetlands.

Final-form § 290.405

Subsection (a) establishes a requirement to minimize dispersion of coal ash from storage piles.

Subsection (b) establishes separation distance from the water table for coal ash stored in piles.

Subsection (c) establishes a requirement for berms around storage piles, collection of runoff and leachate, and, when necessary, treatment of runoff and leachate. The final-form regulation does not require berms for temporary coal ash storage piles due to the short existence of these piles.

Subsection (d) establishes that the Department may require groundwater monitoring for coal ash storage piles without liner systems or pads.

Final-form § 290.406

Subsection (a) establishes that this section applies to storage of coal ash on liners or pads.

Subsection (b) establishes performance and design criteria for the liner or pad related to leachate and runoff construction materials and construction standards that address the integrity and permeability of the liner or pad and any adverse effects from coal ash. Inspections must be performed during construction and installation. Subsection (c) provides for a monitoring system to determine whether coal ash or leachate has penetrated the liner or pad, if required by the Department.

Final-form § 290.407

Subsection (a) establishes that storage piles with a pad or liner system must have leachate and runoff collection and a leachate storage system. The final-form regulation clarifies that the leachate and runoff can be directly sent to a treatment system instead of a leachate storage system.

Subsection (b) establishes design requirements for the leachate storage system that must consist of tanks or impoundments. The requirements address sizing, chemical compatibility, strength, cleanouts and sealing.

Subsection (c) establishes that leachate treatment or disposal must be in accordance with the CSL.

Final-form § 290.408

Subsection (a) establishes that this section and §§ 290.409—290.415 apply to surface impoundments used to store coal ash prior to beneficial use. The citations in the final-form regulation were expanded to include the sections for interim requirements.

Subsection (b) establishes that this section and §§ 290.409—290.415 apply to surface impoundments used to store only stormwater. The citations in the final-form

regulation were corrected and expanded to include the sections for interim requirements.

Subsection (c) establishes a definition of stormwater for this section.

Final-form § 290.409

This section establishes that a coal ash surface impoundment must be permitted under the CSL and comply with requirements in Chapter 105 (relating to dam safety and waterway management).

Final-form § 290.410

This section establishes design criteria for coal ash storage impoundments. The criteria include the liner system, subbase location in relation to water table, subbase performance criteria, leachate detection zone, liner performance criteria, protective cover performance criteria, leachate collection system performance criteria, leachate storage system, leachate collection and handling, and design, construction, operation and maintenance.

Final-form § 290.411

Subsection (a) establishes minimum distance to be maintained between the bottom of the liner system's subbase and the water table.

Subsection (b) specifies marking the edge of the liner.

Subsection (c) establishes that a fence or barrier be maintained around the impoundment and the leachate collection and treatment system.

Subsection (d) establishes fugitive air containment control measures for impoundments.

Subsection (e) establishes that water quality monitoring is required for impoundments.

Subsection (f) establishes coal ash removal performance requirements for impoundments and includes removal without damage to the impoundment, liner inspection, providing for the beneficial use of removed coal ash and ensuring coal ash is not accumulated speculatively.

Final-form § 290.412

Subsection (a) establishes procedures and Department notification if impoundment fails.

Subsection (b) establishes procedures to restore to service impoundments that have failed.

Subsection (c) establishes closure for failed impoundments that cannot be cleaned up in a manner satisfactory to the Department.

Final-form § 290.413

This section establishes that the Department will inspect coal ash storage impoundments.

Final-form § 290.414

This section establishes closure of storage areas, including removal of coal ash and, if required by the Department, regrading and revegetation. The final-form regulation also requires removal of other materials as part of closure.

Final-form § 290.415

This section is new and provides 1 year for storage sites previously meeting the requirements in rescinded § 299.153 to meet the new storage requirements unless they are able to demonstrate that the existing storage is protective.

F. Summary of Comments and Responses on the Proposed Rulemaking

The Board received 285 comments regarding the proposed beneficial use of coal ash regulations during the public hearings and public comment period. The comments were received from over 1,100 commentators, including 13 industry organizations, 7 environmental groups, the Pennsylvania Chamber of Business and Industry and the Independent Regulatory Review Commission (IRRC). The commentators ranged from those who consider the current regulations to be sufficient to those who believe the beneficial use of coal ash should be stopped. Most commentators' opinions fell between these two views and many of their comments led to changes in the final-form rulemaking.

Many commentators noted that after decades of reclamation projects using ash, there have not been negative impacts to the environment. Therefore, implementation of additional requirements is unnecessary and burdensome to industry and may prevent further beneficial use. As stated in the purpose for this final-form rulemaking, the Board saw that there was a need to codify policy into enforceable regulations. The Board also considered the improvements in water quality monitoring and coal ash characterization suggested by the National Academy of Sciences' study and public interest. The final-form rulemaking meets the stated purpose. Changes have been made to lessen the impact on industry. In § 290.2(c) (relating to scope), ash from co-firing alternative fuels with coal can be managed as coal ash. Section 290.104(f) (relating to beneficial use at coal mining activity sites) provides flexibility for the management of ash from multiple small waste coal piles and the reclamation of those sites. Finally, the permit filing fee in § 290.104(c) has been reduced after coal ash placement is completed.

Some commentators see any requirement that may be waived or modified as a loophole and want them all eliminated. Others want the Department to have the ability to waive or modify more of the regulatory requirements. Some ability to waive or modify specific requirements based on site conditions is necessary, as a "one-size fits all" approach will not be appropriate in all situations. However, the commentators raised some valid points that resulted in elimination, modification or the addition of waiver language. Examples include the following: elimination of the waiver in § 290.404(b)(10) (relating to areas where coal ash storage is prohibited) of the siting restriction for distance to a public water supply for a coal ash storage impoundment; change from being able to modify the length of background water quality monitoring to only being able to require a longer period in § 290.301(b)(2) (relating to water quality monitoring); and addition of the ability to waive well filter-packing requirements in § 290.303(a)(4) (relating to standards for wells and casing of wells).

Some commentators believe that limiting the amount of coal ash to the amount of coal, coal refuse, culm or silt in proposed § 290.104(f) and water quality monitoring requirements in proposed § 290.301 will cause remediation of small piles to cease due to costs associated with water quality monitoring. The final-form rulemaking allows a greater quantity of ash to be beneficially used at a site if the site is part of a multiple-site project involving multiple coal refuse reprocessing sites. By allowing a greater quantity to be placed at one location of a multiple-site project, the water quality monitoring requirements can be limited to one site, rather than every small pile in the multisite project.

Several commentators thought the definition of "coal ash" should be revised in the final-form regulations to allow ash produced by co-combustion of coal with alternative fuels to be considered to be coal ash. However, changing the definition of "coal ash" to include ash when alternative fuels are used would broaden its definition beyond the definition of "coal ash" in the SWMA. To accommodate the use of alternative fuels, the final-form rulemaking makes allowances in § 290.2(c) for the beneficial use of coal ash produced from co-firing coal with alternative fuels.

Many commentators said that the 8-foot separation to groundwater should never be waived. While the Department had success with a demonstration project in which coal ash was placed directly into a water-filled surface mine, the National Academy of Sciences recommended that coal ash be kept out of direct contact with water. The Board agreed with this recommendation and removed the waiver language in final-form § 290.101(e). The 8-foot separation does not apply when coal ash is used for mine subsidence control, mine fire control or mine sealing in the final-form regulation, since the coal ash is required to undergo cementitious reactions for these uses, which will greatly reduce the leachability of the coal ash.

Several commentators suggested replacing leach testing using EPA Method 1312 (Synthetic Precipitation Leaching Procedure) (SPLP) in proposed § 290.201(c)(5)(i) with a more costly (estimated by the United States Environmental Protection Agency (EPA) to be \$10,000 to \$15,000 per sample) leaching procedure developed by Kosson at Vanderbilt University. The EPA is currently working on developing this new procedure, which they call the "framework," into a standard procedure. Difficulties in adopting this "framework" procedure include the following: it has not been accepted as an approved, standard method; interpretation of the results is unclear; and it is a very costly procedure that would replace an inexpensive procedure that has proven itself to be protective. The Board recognizes that improved leaching procedures based on the "framework" or on other research could be developed in the future. The final-form rulemaking specifies use of SPLP, but provides the option for the Department to require a different procedure if and when available.

There were many comments on what triggers the need for an assessment plan under § 290.304 (relating to assessment plan). Some commentators indicated a plan should be required when any increase above background occurs. Others indicated that a plan should be required only after an abatement standard is exceeded. Finally, others indicated that a plan should be required only when statistically significant degradation occurs. Some changes that may exceed background levels are actually beneficial, such as an increase in alkalinity at a site impacted by acid mine drainage, and should not trigger an assessment. Abatement standards may already be exceeded prior to coal ash placement at mine sites. The final-form rulemaking indicates that an assessment plan is required when statistically significant degradation occurs. A citation to the methods that may be used to determine what is statistically significant has been added.

Some commentators thought liners should be required for any area where coal ash is placed. Coal ash meeting the strict chemical leaching standards for beneficial use in § 290.201 have not negatively affected ground or surface water resources. Liners are not required in the final-form rulemaking for sites where coal ash is to be beneficially used.

Many commentators indicated that financial assurance should be required for all sites where coal ash is to be beneficially used and that the financial assurance should be adequate upfront to cover the cost of corrective action. Since by statutory definition, beneficially-used coal ash is not solid waste, the Department's ability to require bonding upfront is limited to permitted mine sites. It also has been the Department's position not to require bonding to cover corrective action when problems are not expected to occur, which is the case with beneficial use. The Department does have the ability when degradation occurs to then require financial assurances to cover the Commonwealth's costs for corrective action in case the responsible party does not take sufficient corrective measures. The requested change was not made in the final-form rulemaking.

Since many of the requirements in the final-form rulemaking are new, some commentators requested grandfathering existing requirements or a timeline for complying with new requirements. Interim requirements have been added in §§ 290.307 and 290.415 (relating to interim water quality monitoring requirements; and interim requirements for sites where coal ash has been stored) for water quality monitoring and storage requirements. Many of the new requirements in these regulations, such as coal ash certification, have already been implemented under Departmental policies, so transition provisions in these areas are unnecessary.

IRRC requested an explanation as to why the time frames in § 290.301 are appropriate and how the requirements will work with other Department regulations. There are three time frames for water quality monitoring in § 290.301: background sampling; sampling during coal ash placement; and sampling during post-placement.

Twelve months of background samples allow for the collection of a complete year of data, which will reflect seasonal variations. This approach allows for comparison with future monitoring results. This approach has worked well for establishing baseline conditions in the Remining Program (Chapter 87, Subchapter F and Chapter 88, Subchapter G (relating to surface coal mines: minimum requirements for remining areas with pollutional discharges; and anthracite surface mining activities and anthracite bank removal and reclamation activities: minimum requirements for remining areas with pollutional discharges)).

Quarterly sampling during active placement is designed to capture seasonal variations while limiting the cost of sampling. This has been the Bureau of Mining and Reclamation's standard monitoring approach for other aspects of the Commonwealth's mining program, and it has worked effectively.

Regarding the 10 years of post-placement monitoring, comments received ranged from there should be no regulations (and presumably no monitoring) to suggesting that 30 years should be required. The length of post-placement monitoring is based on Department observations and experience with groundwater systems in coal-bearing rocks and coal mine settings.

G. Benefits, Costs and Compliance Benefits

The citizens of this Commonwealth will be better served by this final-form rulemaking, which is summarized as follows: increased coal ash monitoring to ensure coal ash meets certification criteria; increased water quality monitoring for a longer duration to create a robust data set to facilitate the evaluation and documen-

tation of water quality at sites where coal ash is beneficially used; a requirement for minimum number of monitoring wells to characterize the groundwater or other water quality points; a requirement for recording a landowner consent for placement of coal ash for beneficial use; improved reporting requirements to track volumes and location of sites where coal ash is beneficially used; consistent operational and monitoring standards for all types of beneficial use; a centralized process to certify coal ash for beneficial use at mine sites; an annual fee payable to the Department to offset its costs for coal ash and water quality sampling and testing at mine sites where coal ash is beneficially used; and requirements for the storage of coal ash including provisions for design and operations.

Most of the coal ash beneficially used in this Commonwealth for mine reclamation is used in areas that have existing ground and surface water contamination due to mine drainage. The use of coal ash at these sites is intended to prevent further degradation and, when site conditions are conducive, to provide an overall improvement in groundwater quality. Generally, coal ash is not beneficially used in areas with high quality groundwater, except in special circumstances. For instance, coal ash may be mixed with Portland cement, sand and aggregate to create a grout material and injected into mine voids as a remediation measure for mine subsidence.

Compliance Costs

The Department has already implemented many of the measures that would be required in the final-form rulemaking. Guidance documents have implemented the increased monitoring requirements, including sampling frequency, additional chemical parameters to be tested and additional pre-ash placement and post-ash placement monitoring. Thus, most costs that would be associated with the final-form rulemaking are already part of the Department's program.

The regulated community will be required to complete four water samples per year for each monitoring point. Typically, two to four monitoring points exist for each site resulting in a water monitoring cost of \$2,400 to \$4,800 per year. Four ash dry weight/leachate samples are required every year from the generation site. This results in a cost of approximately \$2,000 per source. Compaction tests for use of coal ash as a structural fill and for mine reclamation must be conducted two times per year at a cost of approximately \$150 per test.

The final-form rulemaking imposes an annual assessment of a permit filing fee of \$2,000 during coal ash placement and \$1,000 post placement. This fee is required to assure that the Department has funds to conduct comparative sampling of the coal ash and water quality regarding individual coal ash beneficial use sites. This fee amount covers the cost of one ash sample (approximately \$500) and five water samples (approximately \$300 x 5) per year.

Sampling requirements have increased from the previous regulations and the filing fee adds these additional costs. These costs are justified to assure protection of human health and aquatic life and to ensure operational and performance standards for beneficial use of coal ash.

More than 11 million tons of coal ash has been beneficially used for mine reclamation each of the past several years. The estimated cost of disposing this material at a landfill would be at least \$275 million per year. Costs of placement at mine sites are on the order of \$55 million per year. Use of coal ash at mine sites as opposed

to land filling the material is a savings to the industry of at least \$220 million per year.

Compliance Assistance Plan

The public will be informed through Department publications, the Internet and other mass media.

Paperwork Requirements

The Department has developed standard forms for applying for beneficial use at a mine site and for requesting certification of coal ash sources for beneficial use. The operators and coal ash generators use these forms to report all monitoring.

A person beneficially using the coal ash is expected to retain documentation to show that the coal ash used at the approved site was a source that was certified by the Department. Annual reports are required for use as structural fill, abandoned coal surface mine sites and at mining activity sites.

H. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) establishes a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials or the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking will not modify the pollution prevention approach by the regulated community and maintains the multimedia pollution prevention approach of existing requirements in 25 Pa. Code (relating to environmental protection).

I. Sunset Review

These regulations 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 October 28, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 6429 (November 7, 2009), to 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 House and Senate 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 October 20, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 21, 2010, and approved the final-form rulemaking.

K. Findings

The Board finds that:

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

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

(3) These regulations do not enlarge the purpose of the proposed rulemaking published at 39 Pa.B. 6429.

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

L. Order

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

(a) The regulations of the Department, 25 Pa. Code, are amended by amending §§ 287.1, 287.101 and 287.601, deleting §§ 287.661—287.666 and 299.153 and adding §§ 290.1, 290.2, 290.101—290.107, 290.201—290.203, 290.301—290.307 and 290.401—290.415 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(Editor's Note: The addition of §§ 290.1, 290.307 and 290.415 and the deletion of § 299.153 were not included in the proposed rulemaking published at 39 Pa.B. 6429.)

(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.

JOHN HANGER,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6487 (November 6, 2010).)

Fiscal Note: Fiscal Note 7-442 remains valid for the final adoption of the subject regulations.

Annex A

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

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE IX. RESIDUAL WASTE MANAGEMENT

CHAPTER 287. RESIDUAL WASTE MANAGEMENT—GENERAL PROVISIONS

Subchapter A. GENERAL

§ 287.1. Definitions.

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

* * * * *

Coal ash—For purposes of Chapters 287 and 290, fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is or has been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose. The term includes such materials that are stored, processed, transported or sold for beneficial use, reuse or reclamation. For purposes of Chapter 288 (relating to residual waste landfills), the term also includes fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is not and has not been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose.

* * * * *

Solid waste—Waste, including, but not limited to, municipal, residual or hazardous waste, including solid, liquid, semisolid or contained gaseous materials. The term does not include coal ash that is beneficially used under Chapter 290 (relating to beneficial use of coal ash) or drill cuttings.

* * * * *

Structural fill—The engineered use of coal ash as a base or foundation for a construction activity that is completed promptly after the placement of the coal ash, including the use of coal ash as backfill for retaining walls, foundations, ramps or other structures. The term does not include valley fills or the use of solid waste to fill open pits from coal or noncoal mining.

* * * * *

Subchapter C. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

GENERAL

§ 287.101. General requirements for permit.

* * * * *

(b) A person or municipality is not required to obtain a permit under this article, comply with the bonding or insurance requirements of Subchapter E (relating to bonding and insurance requirements) or comply with Subchapter B (relating to duties of generators) for one or more of the following:

* * * * *

(3) The beneficial use of coal ash under Chapter 290 (relating to beneficial use of coal ash).

Subchapter H. BENEFICIAL USE

SCOPE

§ 287.601. Scope.

(a) This subchapter sets forth requirements for the processing and beneficial use of residual waste. Sections 287.611, 287.612, 287.621—287.625, 287.631, 287.632, 287.641—287.643, 287.651 and 287.652 establish procedures and standards for general permits for the beneficial use or processing of residual waste.

* * * * *

§§ 287.661—287.666. (Reserved).

CHAPTER 290. BENEFICIAL USE OF COAL ASH

Subch.

- A. GENERAL
- B. BENEFICIAL USE OF COAL ASH
- C. COAL ASH CERTIFICATION
- D. WATER QUALITY MONITORING
- E. COAL ASH STORAGE

Subchapter A. GENERAL

Sec.

- 290.1. Definitions.
- 290.2. Scope.

§ 290.1. Definitions.

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

Temporary coal ash storage pile—A pile in which coal ash is stored for not more than 2 weeks.

Water table—

(i) The top of the saturated zone.

(ii) The term includes the regional groundwater table, perched water tables, seasonal high water table and mine pools.

§ 290.2. Scope.

(a) This chapter sets forth requirements for beneficial use of coal ash. Fly ash, bottom ash or boiler slag resulting from the combustion of coal that is not beneficially used in accordance with this chapter is a residual waste and is subject to regulation under other chapters in this article.

(b) If coal ash is mixed with residual waste, the beneficial use must be authorized by a permit issued under Chapter 287, Subchapter H (relating to beneficial use) and the requirements of this chapter must be met.

(c) If coal ash is produced by co-firing coal or waste coal with an alternative fuel:

(1) Beneficial use of that material is regulated under this chapter as coal ash if the alternative fuel is less than 20% by weight of the total fuel mixture, as burned, and contributes less than 10% by weight of total ash quantity.

(2) Beneficial use must be authorized by a permit issued under Chapter 287, Subchapter H and the requirements of this chapter must be met if the alternative fuel is equal to or greater than 20% by weight of the total fuel mixture, as burned, or contributes equal to or greater than 10% by weight of total ash quantity.

(d) If coal ash is mixed with construction and demolition waste, the beneficial use must be authorized under a permit issued under Article VIII (relating to municipal waste) and the requirements of this chapter must be met.

(e) Coal ash mixed with municipal waste, other than construction and demolition waste, may not be beneficially used by direct placement into the environment. Other types of beneficial use of coal ash mixed with municipal waste may be authorized by a permit issued under Article VIII and any applicable requirements of this chapter must be met.

(f) Beneficial use activities that are subject to and meet the requirements of this chapter are not required to obtain an individual disposal permit under this article.

Subchapter B. BENEFICIAL USE OF COAL ASH

Sec.

- 290.101. General requirements for beneficial use.
- 290.102. Use as structural fill.
- 290.103. Use as a soil substitute or soil additive.
- 290.104. Beneficial use at coal mining activity sites.
- 290.105. Beneficial use at abandoned mine lands.
- 290.106. Other beneficial uses.
- 290.107. Requests for information.

§ 290.101. General requirements for beneficial use.

(a) Coal ash may be beneficially used without a permit from the Department under the act if the person proposing the use complies with this chapter.

(b) Chemical analysis must demonstrate that the coal ash does not exceed any of the maximum acceptable leachate levels in § 290.201(a) (relating to coal ash certification) when coal ash is proposed to be used under §§ 290.102—290.105 or § 290.106(a)(3) or (7). The minimum sampling and analysis procedures must satisfy the requirements in § 290.201(b) and (d).

(c) The coal ash must satisfy the physical characteristics for the intended use in § 290.201(a).

(d) A water quality monitoring plan in accordance with § 290.301 (relating to water quality monitoring) and, if applicable, Chapters 86—90 shall be developed and implemented if either more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total will be used as structural fill at a coal mining activity site or at an abandoned mine land site. Contiguous projects will be considered a single project for purposes of this section. The Department may require a water quality monitoring plan for projects involving lesser quantities of coal ash or for other beneficial uses of coal ash where site conditions warrant.

(e) Coal ash may not be placed within 8 feet of the water table, except where coal ash is used for mine subsidence control, mine fire control or mine sealing under § 290.106(a)(7) (relating to other beneficial uses).

(f) Coal ash may not be used in a way that causes water pollution.

§ 290.102. Use as structural fill.

(a) At least 60 days before using coal ash as structural fill, the person proposing the use shall submit a written proposal to the Department. The written proposal must contain, at a minimum, the following information:

(1) A description of the nature, purpose and location of the project, including a topographic map showing the project and available soils maps of the area of the project.

(2) The estimated beginning and ending dates for the project.

(3) Construction plans for the structural fill, including a stability analysis when necessary, which shall be prepared by a licensed professional engineer in accordance with sound engineering practices and which shall be signed and sealed by the engineer.

(4) An estimate of the volume of coal ash to be used for the project.

(5) A total chemical and leaching analysis under § 290.201(a)(1) and (2) (relating to coal ash certification) for the coal ash to be used in the project. If the coal ash was generated at a facility for which the Department has previously approved a chemical and leaching analysis and the analysis is not older than 1 year, the person may submit a copy of the analysis that was approved.

(6) A signed statement by the owner of the land on which the structural fill is to be placed, acknowledging and consenting to the beneficial use of coal ash as structural fill.

(7) The statement by the landowner in paragraph (6) shall be a recordable document for any project, or set of contiguous projects involving placement of more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total per project. Prior to beneficial use

of more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total per project under this section, the statement by the landowner shall be recorded at the office of the recorder of deeds in the county in which the proposed coal ash beneficial use will take place.

(b) A person proposing to use coal ash as structural fill where more than 10,000 tons of coal ash per acre will be used on a project or more than 100,000 tons of coal ash in total will be used at a project shall place, at the time of filing a written proposal with the Department, a public notice in a local newspaper of general circulation in the locality of the proposed coal ash beneficial use activities at least once a week for 3 consecutive weeks. Contiguous projects will be considered a single project for purposes of this section. A copy of the public notice shall be provided to the local municipality and proof of public notice shall be submitted to the Department. At a minimum, the public notice must contain the following information:

(1) The name and business address of the person proposing to beneficially use coal ash.

(2) A brief description of the location and scope of the proposed beneficial use.

(3) The location of the Department office where a copy of the written proposal submitted to the Department is available for public inspection.

(c) The Department may require public notice for projects involving less than 10,000 tons of coal ash per acre or less than 100,000 tons of coal ash in total if the Department determines that the proposed beneficial use activities are of significant interest to the public or site conditions warrant.

(d) The Department will publish a summary of each written proposal in the *Pennsylvania Bulletin*.

(e) After receiving the information required under subsection (a), the Department will inform, in writing, the person that provided the information whether the proposed use of coal ash as structural fill is consistent with this section.

(f) For coal ash being beneficially used as a structural fill, the following additional requirements must be satisfied:

(1) The pH of the coal ash as placed must be 7.0 or above, unless otherwise approved by the Department. Lime may be added to raise pH. The pH of the coal ash may not be above 9.0 during placement and storage at the site of placement unless public access is restricted.

(2) The slope of a structural fill may not be greater than 2.5 horizontal to 1.0 vertical. The Department may approve a greater slope based on a demonstration of structural stability.

(3) Coal ash shall be spread uniformly and compacted in layers not exceeding 2 feet in thickness. The coal ash shall be spread and compacted within 24 hours of its delivery to the site unless stored in accordance with Subchapter E (relating to coal ash storage).

(4) Surface runoff from the fill area shall be minimized during filling and construction activity. Stormwater shall be managed in accordance with The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the regulations promulgated thereunder.

(5) Surface water shall be diverted away from the disturbed area during filling and construction activity.

(6) Coal ash shall be covered with 12 inches of soil, unless infiltration is prevented by other cover material.

(7) Coal ash must achieve a minimum compaction of 90% of the maximum dry density as determined by the Modified Proctor Test, or 95% of the maximum dry density as determined by the Standard Proctor Test.

(8) The offsite dispersion of dust from coal ash and other materials shall be minimized.

(g) Coal ash used as structural fill may not be located:

(1) Within 100 feet of an intermittent or perennial stream or within 300 feet of exceptional value or high quality waters as defined in § 93.1 (relating to definitions), unless the structural fill is otherwise protected by a properly engineered diversion or structure that is permitted by the Department under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

(2) Within 300 feet of a water supply unless the person obtains, in a form acceptable to the Department, a written waiver from the owner of the water supply, allowing for another distance.

(3) Within 25 feet of a bedrock outcrop, unless the outcrop is properly treated to minimize infiltration into fractured zones or otherwise approved by the Department.

(4) Within 100 feet of a sinkhole or area draining into a sinkhole.

(5) Within a 100-year floodplain of a water of this Commonwealth, unless a properly engineered dike, levee or other structure that can protect the structural fill from a 100-year flood is permitted by the Department in a manner that is consistent with the Flood Plain Management Act (32 P. S. §§ 679.101—679.601), the Storm Water Management Act (32 P. S. §§ 680.1—680.17) and the Dam Safety and Encroachments Act.

(6) In or within 100 feet of a wetland, other than an exceptional value wetland.

(7) In or within 300 feet of an exceptional value wetland.

(h) A person that proposed more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total at any project or contiguous projects shall submit to the Department prior to January 31 an annual report for the previous calendar year that includes contact information, the location of the site where the coal ash was utilized, the identity of each source of coal ash, and the volume in cubic yards and the weight in dry tons for each source.

(i) A person beneficially using coal ash under this section shall notify the Department within 72 hours of any evidence that the material does not meet the chemical standards or physical property requirements in § 290.201.

§ 290.103. Use as a soil substitute or soil additive.

(a) At least 60 days before using coal ash as a soil substitute or soil additive, the person proposing the use shall submit a written proposal to the Department. The written proposal must contain, at a minimum, the following information:

(1) A description of the nature, purpose and location of the project, including a topographic map showing the project area and available soils maps of the project area. The description must include an explanation of how coal ash will be stored prior to use, how the soil will be

prepared for the application of coal ash, how coal ash will be spread and, when necessary, how coal ash will be incorporated into the soil.

(2) The estimated beginning and ending dates for the project.

(3) An estimate of the volume of coal ash to be used for the project, the proposed application rate and a justification for the proposed application rate.

(4) A total chemical and leaching analysis and pH under § 290.201(a)(1) and (2) (relating to coal ash certification) for the coal ash to be used in the project. If the coal ash was generated at a facility for which the Department has previously approved a chemical and leaching analysis and the analysis is not older than 1 year, the person may submit a copy of the analysis that was approved.

(5) A chemical analysis for constituents listed in subsection (e) of the soil on which the coal ash is proposed to be placed.

(6) An analysis showing how the application of coal ash will be beneficial to the productivity or properties of the soil to which it is proposed to be applied. The analysis shall be prepared and signed by an expert in soil science.

(7) A signed statement by the owner of the land on which the coal ash is to be placed, acknowledging and consenting to the use of coal ash as a soil substitute or soil additive.

(b) After receiving the information required by subsection (a), the Department will inform, in writing, the person that provided the information whether the proposed use of coal ash as a soil substitute or soil additive is consistent with this section.

(c) Coal ash used as a soil substitute or soil additive may not be considered a beneficial use unless the following requirements are met:

(1) The pH of the coal ash and the pH of the soil must be in the range of 6.5 to 8.0 when mixed together in the manner required by the project, as shown by field and laboratory testing. Lime may be added to raise pH.

(2) Chemical analysis demonstrates the coal ash satisfies the minimum calcium carbonate equivalency requirement in § 290.201(a).

(3) Surface runoff from the project area shall be controlled during the project. Stormwater shall be managed in accordance with The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the regulations promulgated thereunder.

(4) Coal ash shall be incorporated into the soil within 48 hours of application, unless otherwise approved by the Department. The coal ash shall be incorporated into the top 1-foot layer of surface soil. If 1 foot of surface soil is not present, coal ash may be combined with the surface soil that is present until the layer of combined surface soil and coal ash is 1 foot. The coal ash required for the beneficial use is limited to the amount necessary to enhance soil properties or plant growth.

(5) Coal ash shall be applied at a rate per acre that will protect public health, public safety and the environment.

(6) Coal ash may not be applied to soil being used for agriculture where the soil pH is less than 5.5.

(7) Coal ash may not be applied if resultant chemical or physical soil conditions would be detrimental to biota.

(8) The offsite dispersion of dust from coal ash and other materials shall be minimized.

(d) Coal ash may not be used as a soil substitute or soil additive:

(1) Within 100 feet of an intermittent or perennial stream, other than exceptional value or high quality waters as defined in § 93.1 (relating to definitions), or a wetland other than an exceptional value wetland.

(2) In or within 300 feet of an exceptional value wetland, or of exceptional value or high quality waters as defined in § 93.1.

(3) Within 300 feet of a water supply unless the person obtains, in a form acceptable to the Department, a written waiver from the owner of the water supply, allowing for another distance.

(4) Within 100 feet of a sinkhole or area draining into a sinkhole.

(5) Within 300 feet measured horizontally from an occupied dwelling, unless the current owner has provided a written waiver consenting to the activities closer than 300 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner.

(e) Coal ash may not be used as a soil substitute or soil amendment in amounts that exceed the following maximum cumulative loading rates:

<i>Constituent</i>	<i>Cumulative Loading Rate</i>
arsenic	36 lbs/acre (41 kg/hectare)
boron	60 lbs/acre (67.2 kg/hectare)
cadmium	34 lbs/acre (38 kg/hectare)
chromium	2,672 lbs/acre (3,104 kg/hectare)
copper	1,320 lbs/acre (1,490 kg/hectare)
lead	264 lbs/acre (296 kg/hectare)
mercury	15 lbs/acre (17 kg/hectare)
molybdenum	16 lbs/acre (18 kg/hectare)
nickel	370 lbs/acre (420 kg/hectare)
selenium	88 lbs/acre (99 kg/hectare)
zinc	2,464 lbs/acre (2,780 kg/hectare)

(f) A person subject to the requirements of this section shall retain records of chemical and physical analyses, the quantity of coal ash utilized, the location of placement and the sources of coal ash for a minimum of 3 years after the beneficial use has ceased. The records shall be made available to the Department upon request.

(g) A person beneficially using coal ash under this section shall notify the Department within 72 hours of any evidence that the material does not meet the chemical standards or physical property requirements in § 290.201.

§ 290.104. Beneficial use at coal mining activity sites.

(a) *Coal ash approval at coal mining activity sites.* Approval for the beneficial use of coal ash at coal mining activity sites as defined in § 86.1 (relating to definitions) will, at a minimum, be based on the following:

(1) Compliance with this section, The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the regulations promulgated thereunder, the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66), the applicable provisions of Chapters 86—90 (relating to surface and underground coal mining: general, surface mining of coal, anthracite coal, underground mining of coal and coal preparation facilities, and coal

refuse disposal), and other applicable environmental statutes and regulations promulgated thereunder.

(2) Certification under § 290.201 (relating to coal ash certification) by the Department for the intended beneficial uses.

(3) Approval of a request submitted pursuant to subsection (b).

(b) *Request.* A person shall submit to the Department a request to beneficially use the certified coal ash at a specific coal mining activity site as part of the reclamation plan under the mining permit. This request must contain the permit filing fee in subsection (c) and, at a minimum, the following:

(1) A narrative description of the project, including an explanation of how coal ash will be placed, where and how coal ash will be stored prior to placement, identification of the sources of coal ash and an estimate of the cubic yards of coal ash to be used. For the beneficial use of coal ash as a soil substitute or additive, the proposed application rate and justification for the application rate shall also be included.

(2) Information demonstrating that the coal ash has been certified for its intended use in accordance with § 290.201, including the identity of the generator and the Department-assigned certification identifier, as described in § 290.201(c).

(3) A signed statement by the owner of the land on which the coal ash is to be placed, acknowledging and consenting to the placement of coal ash. This statement by the landowner shall be a recordable document. Prior to beneficial use of coal ash under this section, the statement by the landowner shall be recorded at the office of the recorder of deeds in the county in which the proposed beneficial use of coal ash will take place.

(4) A monitoring plan that meets the requirements of Subchapter D (relating to water quality monitoring).

(c) *Permit filing fee.*

(1) A nonrefundable permit filing fee payable to the “Commonwealth of Pennsylvania” for the beneficial use of coal ash at a coal mining activity site is to be paid annually in the amount of:

(i) \$2,000 for each coal mining activity site approved to use coal ash until the year following final placement of coal ash at the site.

(ii) \$1,000 from the year following final placement of coal ash until final bond release has been issued for the coal mining activity site.

(2) Money received from the permit filing fee for the beneficial use of coal ash will be deposited in the Surface Mining Conservation and Reclamation Fund and will be used by the Department for the cost of reviewing, administering and enforcing the requirements of the authorization for beneficial use of coal ash under the coal mining activity permit.

(3) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the EQB. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it shall contain recommendations to adjust fees to eliminate the disparity, including recommendations for regulatory amendments to adjust program fees.

(d) *Public notice.* A person proposing to use coal ash at coal mining activity sites shall provide public notice under § 86.31 or § 86.54 (relating to public notices of filing of permit applications; and public notice of permit revision).

(e) *Operating requirements.* The beneficial use of coal ash for reclamation purposes at a coal mining activity site shall be designed to achieve an overall improvement in water quality or shall be designed to prevent the degradation of water quality. Coal ash shall only be beneficially used for reclamation at the following locations:

(1) The pit or area from which coal is extracted under a surface coal mining permit.

(2) Abandoned mine lands located within the surface coal mining permit area.

(3) Coal refuse disposal sites and coal refuse reprocessing sites.

(4) Areas where other beneficial uses that are part of the approved reclamation plan at the coal mining activity site are being conducted.

(f) *Additional operating requirements for the placement of coal ash at permitted coal surface mining activity sites.* Placement of coal ash at coal surface mining activity sites must comply with the following additional requirements:

(1) The volume of coal ash placed at the site may not exceed the volume of coal, coal refuse, culm or silt removed from the site by the active mining operation on a cubic yard basis unless otherwise approved by the Department. The Department may authorize a greater volume of coal ash where the mine operator demonstrates that reclamation will be enhanced or water quality will be improved by the additional coal ash.

(2) Placement of coal ash shall be accomplished by mixing with spoil material or by spreading in horizontal layers no greater than 2 feet thick unless otherwise approved by the Department. The reclamation plan of the approved mining permit must address the placement of the coal ash.

(3) The coal ash shall be spread and compacted within 24 hours of its delivery to the site unless stored in accordance with Subchapter E (relating to coal ash storage).

(4) Where placement of coal ash is not being accomplished by mixing with spoil, the placed coal ash must achieve a minimum compaction of 90% of the maximum dry density as determined by the Modified Proctor Test, or 95% of the maximum dry density as determined by the Standard Proctor Test. The Proctor Test shall be conducted on a semiannual basis unless the Department requires more frequent testing.

(5) For a project involving multiple refuse reprocessing sites, the Department may allow a greater volume of coal ash to be placed at an individual site than the volume of coal refuse removed from that site if the following conditions are met:

(i) The multiple sites are a project involving the coordinated use of multiple coal refuse reprocessing sites.

(ii) A reclamation plan is approved for each of the sites and each plan identifies the total cubic yards of coal ash that may be placed at each site.

(iii) The total cubic yards of coal ash placed on the sites is less than the total cubic yards of refuse, culm or silt removed from the combined sites.

(iv) The project shall be designed to achieve an overall improvement of surface water or groundwater quality at each site, where acid mine drainage is evident. If acid mine drainage is not evident, the project shall be designed to prevent degradation of the surface or groundwater quality.

(v) Only coal ash from the project can be used.

(vi) The project shall be accomplished in a manner that blends into the general surface configuration and complements the surface drainage pattern of the surrounding landscape.

(6) The person shall maintain information identifying the sources and the volume in cubic yards and the weight in dry tons of coal ash used.

(7) The site shall be monitored in accordance with the requirements of Subchapter D (relating to water quality monitoring) and any additional hydrologic tests specified by the Department.

(8) The offsite dispersion of dust from coal ash and other materials shall be minimized.

(g) *Additional operating requirements for the beneficial use of coal ash as a soil substitute or soil additive.* The following apply to the beneficial use of coal ash as a soil substitute or soil additive:

(1) Coal ash shall be applied at a rate per acre that will protect public health, public safety and the environment.

(2) The coal ash that is applied will be part of the approved reclamation plan of the coal mining activity in order to increase the productivity or properties of the soil.

(3) The coal ash is not used in amounts that exceed the maximum cumulative loading rates in § 290.103(e) (relating to use as a soil substitute or soil additive).

(4) The offsite dispersion of dust from coal ash and other materials shall be minimized.

(h) *Additional operating requirements for the beneficial use of coal ash at coal refuse disposal sites.* The following apply to the beneficial use of coal ash at coal refuse disposal sites:

(1) Placement of coal ash as part of coal refuse disposal operations permitted under Chapters 86—90 must meet the following:

(i) The cubic yards of coal ash does not exceed the total cubic yards of coal refuse to be disposed based on uncompacted volumes of materials received at the site.

(ii) The coal ash has physical and chemical characteristics that meet the following requirements:

(A) Improve compaction and stability within the fill.

(B) Reduce infiltration of water into coal refuse.

(C) Improve the quality of leachate generated by the coal refuse.

(2) The offsite dispersion of dust from coal ash and other materials shall be minimized.

(i) *Additional coal ash sampling.* A person using coal ash at a coal mining activity site shall, each quarter that coal ash is being used at the site, sample the coal ash after it has been placed at the site and such sample shall be analyzed in accordance with § 290.201. The results of the analysis shall be submitted quarterly to and in the format required by the Department. A reduced frequency may be approved by the Department where a coal mining

activity site is receiving coal ash from only one source and is located at one of the following:

(1) On the same tract of land where the coal ash was generated.

(2) On a tract of land contiguous to the tract where the coal ash was generated.

(3) On a tract of land connected to the tract where the coal ash was generated by a right-of-way controlled by the generator and to which the public does not have access.

(4) On a tract of land separated from the tract where the coal ash was generated by only a public or private right-of-way and access between the two tracts is by crossing rather than traveling along the right-of-way.

(j) *Annual report.* Prior to January 31, the permittee of a coal mining activity site where coal ash was placed in the previous calendar year shall submit a report for the previous calendar year to the Department that includes permit number, mining company contact information, the identity of each source of coal ash and its Department-assigned certification identifier, and the volume in cubic yards and the weight in dry tons for each source of coal ash that was placed at the site.

(k) *Notification to Department.* A person beneficially using coal ash under this section shall notify the Department within 72 hours of any evidence that the material does not meet the certification requirements in § 290.201.

§ 290.105. Beneficial use at abandoned mine lands.

(a) *Reclamation contract with the Department.* Coal ash may be beneficially used for the purposes of reclamation at abandoned mine lands, as defined in § 86.252 (relating to definitions), only if the reclamation work is performed pursuant to a contract with the Department. The beneficial use of coal ash at abandoned mine lands will, at a minimum, be based on the following:

(1) Compliance with this section and the applicable environmental statutes and regulations promulgated thereunder.

(2) Certification under § 290.201 (relating to coal ash certification) by the Department for the intended use.

(3) Approval of a contract proposal submitted under subsection (b).

(b) *Contract proposal.* A proposal for the use of coal ash at abandoned mine lands must contain the following:

(1) A narrative description of the project, including an estimated beginning date and ending date for the project, an explanation of how coal ash will be placed, where and how coal ash will be stored prior to placement, identification of the sources of coal ash and an estimate of the cubic yards of coal ash to be used. For the beneficial use of coal ash as a soil substitute or additive, the proposed application rate and justification for the application rate shall also be included.

(2) Information demonstrating that the coal ash has been certified for its intended use in accordance with § 290.201, including the identity of the generator and the Department-assigned certification identifier, as described in § 290.201(c).

(3) Reclamation plans, including a stability analysis, when necessary, prepared by a licensed professional engineer in accordance with sound engineering practice and signed and sealed by the engineer.

(4) A signed statement by the owner of the land on which the coal ash is to be placed, acknowledging and consenting to the placement of coal ash. This statement by the landowner shall be a recordable document. Prior to beneficial use of coal ash under this section, the statement by the landowner shall be recorded at the office of the recorder of deeds in the county in which the proposed coal ash beneficial use will take place.

(5) A water quality monitoring plan consistent with the requirements in § 290.101(d) (relating to general requirements for beneficial use).

(c) *Public notice.* As a condition of contract award, a person proposing to use coal ash for reclamation involving use of more than 10,000 tons of coal ash per acre on a project or more than 100,000 tons of coal ash in total at any project shall place an advertisement in a local newspaper of general circulation in the locality of the proposed coal ash beneficial use activities at least once a week for 3 consecutive weeks. Contiguous projects will be considered a single project for purposes of this section. The Department may require public notice for projects involving lesser amounts of coal ash if the Department determines that the proposed beneficial use activities are of significant interest to the public or site conditions warrant. If public notice is required, a copy shall be provided to the local municipality and proof of notice shall be submitted to the Department. At a minimum, the notice must contain the following information:

(1) The name and business address of the person proposing to beneficially use coal ash.

(2) A brief description of the location and scope of the proposed beneficial use.

(3) The location of the public office where a copy of the contract proposal submitted to the Department is available for public inspection.

(d) *Department notification.* The Department will publish a summary of each contract in the *Pennsylvania Bulletin*.

(e) *Operating requirements.* The use of coal ash as part of the reclamation activity at abandoned mine lands must satisfy the following additional requirements:

(1) The slope of the reclaimed area may not be greater than 2.5 horizontal to 1.0 vertical. The Department may approve a greater slope based on a demonstration of stability.

(2) Coal ash shall be spread uniformly and compacted in layers not exceeding 2 feet in thickness unless otherwise approved by the Department. The coal ash shall be spread and compacted within 24 hours of its delivery to the site unless stored in accordance with Subchapter E (relating to coal ash storage).

(3) Surface runoff from the reclamation area shall be minimized during construction activity. Stormwater shall be managed in accordance with The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the regulations promulgated thereunder.

(4) Surface water shall be diverted away from the disturbed area during construction activity.

(5) Coal ash shall be covered with 12 inches of soil, unless infiltration is prevented by other cover material.

(6) Coal ash must achieve a minimum compaction of 90% of the maximum dry density as determined by the Modified Proctor Test, or 95% of the maximum dry density as determined by the Standard Proctor Test. Ash from each source shall be tested individually.

(7) The offsite dispersion of dust from coal ash and other materials shall be minimized.

(8) Coal ash used for reclamation may not be placed:

(i) Within 100 feet of an existing intermittent or perennial stream, unless the person demonstrates to the Department's satisfaction that ash placement within 100 feet of the stream is necessary to remediate abandoned mine features located within 100 feet of the stream.

(ii) Within 300 feet of exceptional value or high quality waters as defined in § 93.1 (relating to definitions), unless the person demonstrates to the Department's satisfaction that ash placement within 300 feet of the waters is necessary to remediate abandoned mine features located within 300 feet of the waters.

(iii) Within 300 feet of a water supply unless the person obtains, in a form acceptable to the Department, a written waiver from the owner of the water supply, allowing for another distance.

(iv) Within 100 feet of a sinkhole or area draining into a sinkhole.

(v) Within a 100-year floodplain of a water of this Commonwealth, unless a properly engineered dike, levee or other structure that can protect the reclamation area from a 100-year flood is permitted by the Department in a manner that is consistent with the Flood Plain Management Act (32 P. S. §§ 679.101—679.601), the Storm Water Management Act (32 P. S. §§ 680.1—680.17) and the Dam Safety and Encroachments Act.

(vi) In or within 100 feet of a wetland, other than an exceptional value wetland.

(vii) In or within 300 feet of an exceptional value wetland.

(9) The following apply to the beneficial use of coal ash as a soil substitute or soil additive:

(i) Coal ash shall be applied at a rate per acre that will protect public health, public safety and the environment.

(ii) The coal ash that is applied will be part of the approved reclamation plan in order to increase the productivity or properties of the soil.

(iii) The coal ash is not used in amounts that exceed the maximum cumulative loading rates in § 290.103(e).

(f) *Annual report.* Prior to January 31, any person that placed coal ash at an abandoned mine land site in the previous calendar year shall submit a report for the previous calendar year to the Department that includes company contact information, the identity of the reclamation contract with the Department, the identity of each source of coal ash and its Department-assigned certification identifier, and the volume in cubic yards and the weight in dry tons for each source of coal ash that was placed at the site.

(g) *Notification to Department.* A person beneficially using coal ash under this section must notify the Department within 72 hours of any evidence that the material does not meet the certification requirements in § 290.201.

§ 290.106. Other beneficial uses.

(a) The following uses of coal ash are deemed to be beneficial and do not require a permit from the Department under the act provided the uses are consistent with the requirements of this section:

(1) The use of coal ash in the manufacture of concrete or cement. The coal ash shall be utilized within 24 hours

of its delivery to the site unless stored in accordance with Subchapter E (relating to coal ash storage).

(2) The extraction or recovery of one or more materials and compounds contained within the coal ash if the following conditions are met:

(i) Storage of coal ash before and after extraction or recovery shall be subject to Subchapter E.

(ii) Disposal of the unrecovered fraction of coal ash shall be subject to the applicable requirements for residual waste.

(3) The use of fly ash as a stabilized product. Other uses of fly ash in which physical or chemical characteristics are altered prior to use or during placement will be considered a beneficial use under this section if the following conditions are met:

(i) The person proposing the use has first given advance written notice to the Department.

(ii) The fly ash is not mixed with solid waste, unless otherwise approved, in writing, by the Department prior to the use.

(iii) The use of the fly ash results in a demonstrated reduction of the potential of the material to leach constituents into the environment.

(iv) If fly ash is used as structural fill, the requirements of § 290.102 (relating to use as structural fill) must be met.

(v) If fly ash is used as a soil amendment, the requirements of § 290.103 (relating to use as a soil substitute or soil additive) must be met.

(4) The use of bottom ash or boiler slag as an antiskid material or road surface preparation material, if the use is consistent with Department of Transportation specifications or other applicable specifications. The use of fly ash as an antiskid material or road surface preparation material is not deemed to be a beneficial use.

(5) The use of coal ash as raw material for a product with commercial value, including the use of bottom ash in construction aggregate. Storage of coal ash prior to processing is subject to Subchapter E.

(6) The use of coal ash as pipe bedding, if the person proposing the use has first given advance written notice to the Department, and has provided to the Department an evaluation of the pH of the coal ash and a chemical analysis of the coal ash.

(7) The use of coal ash for mine subsidence control, mine fire control and mine sealing, if the following requirements are met:

(i) The person proposing the use gives advance written notice to the Department.

(ii) If a project is funded by or through the Department, use of the coal ash shall be consistent with applicable Departmental requirements and contracts.

(iii) The coal ash shall be utilized within 24 hours of its delivery to the site unless stored in accordance with Subchapter E.

(iv) The coal ash will undergo cementitious reactions after placement.

(8) The use of coal ash as a fuel, provided it has a minimum heating value of 5,000 Btu/lb. Storage of coal ash prior to use as a fuel is subject to Subchapter E.

(b) A person beneficially using coal ash under this section shall notify the Department within 72 hours of

any evidence that the material does not meet appropriate chemical standards or physical property requirements in § 290.201 (relating to coal ash certification).

(c) A person subject to the requirements of this section shall retain records of chemical and physical analyses, the quantity of coal ash utilized, the location of placement and the sources of coal ash for a minimum of 3 years after the beneficial use has ceased. The records shall be made available to the Department upon request.

§ 290.107. Requests for information.

(a) The Department may request documents and other information from a person to demonstrate that the person is conducting or proposing to use coal ash in a manner that is compliant with this subchapter and the person shall make the documents and information available to the Department upon request.

(b) Failure to have documentation of compliance with this subchapter may lead to a presumption that the person is disposing residual waste without a permit.

Subchapter C. COAL ASH CERTIFICATION

Sec.

290.201. Coal ash certification.

290.202. Revocation of certification.

290.203. Exceedance of certification requirements.

§ 290.201. Coal ash certification.

(a) Certification standards are as follows:

(1) Maximum acceptable leachate levels for certification:

(i) For metals and other cations other than selenium, 25 times the waste classification standard for a contaminant.

(ii) For selenium, 10 times the waste classification standard.

(iii) For nonmetals and anions other than sulfate and fluoride, the waste classification standard for a contaminant.

(iv) For sulfate, 10 times the waste classification standard.

(2) The pH of coal ash must be 7.0 or above.

(3) For coal ash used as an alkaline additive, the calcium carbonate equivalency, as determined by the Neutralization Potential Test in the Department's *Overburden Sampling and Testing Manual* (Noll, et al., 1988) or other method approved by the Department, must be a minimum of 100 parts per thousand (10% by weight).

(4) For coal ash used as a low permeability material, the hydraulic conductivity of the coal ash must be 1.0×10^{-6} cm/sec or less based on hydraulic conductivity testing using ASTM D 5084 (Standard Test Method for Measurement of Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Perimeter) or other method approved by the Department. Hydraulic conductivity testing should use compaction and other preparation techniques that will duplicate the expected conditions at the mine site.

(5) The Department may approve the addition of lime or cement to coal ash to achieve the requirements of this subsection. Use of these conditioners must be designated as part of the request in subsection (b).

(b) A request by the generator for coal ash certification must contain the following information on a form provided by the Department:

(1) The name and location of the generator of the coal ash.

(2) A designation of the beneficial use or uses for which certification is requested.

(3) A description of the generation process specific to the generator, including the combustion process, and pollution control processes that impact the chemical characteristics or physical properties of the coal ash, the fuel sources utilized, and the expected percentages of coal ash derived from different processes that will be incorporated into the final coal ash stream to be delivered to the beneficial use site.

(4) A description of the physical properties and chemical characteristics of any material mixed with the coal ash, the extent of mixing, and the mixing methods used.

(5) A detailed chemical analysis on at least four representative samples spaced throughout a 2 to 6-month sampling period within the last year that fully characterizes the composition of the coal ash. The chemical analysis must include:

(i) Total concentrations for aluminum, antimony, arsenic, barium, beryllium, boron, cadmium, calcium, chromium, cobalt, copper, iron, lead, magnesium, manganese, mercury, molybdenum, nickel, potassium, selenium, silver, sodium, sulfur, thallium, vanadium and zinc using methods found in EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW-846) or comparable methods approved by the Department.

(ii) Leachable concentrations for aluminum, ammonia, antimony, arsenic, barium, beryllium, boron, cadmium, calcium, chloride, chromium, cobalt, copper, fluoride, iron, lead, magnesium, manganese, mercury, molybdenum, nickel, nitrate, nitrite, potassium, selenium, silver, sodium, sulfate, thallium, vanadium and zinc using methods found in EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW-846) or comparable methods approved by the Department. Leachate concentrations must be determined using EPA Method 1312, the synthetic precipitation leaching procedure, unless another leaching procedure is required by the Department.

(iii) pH using the soil and waste pH method found in EPA's "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW-846) or comparable methods approved by the Department.

(iv) Information to show that the laboratory making a chemical analysis for the application is in compliance with 27 Pa.C.S. Chapter 41 (relating to environmental laboratory accreditation).

(6) A laboratory analysis for optimum moisture content and dry density (Standard or Modified Proctor Test).

(7) An analysis of hydraulic conductivity reported in cm/sec.

(8) A determination of neutralization potential as determined by the Neutralization Potential Test in the Department's *Overburden Sampling and Testing Manual* (Noll, et al., 1988) or other method approved by the Department.

(9) A detailed description of the sampling methodology used, date the samples were taken, and name and contact information of the person performing the sampling.

(10) Other physical or chemical testing results, if required for the particular beneficial uses being proposed.

(c) The Department will review the certification request and notify the generator in writing of the Department-assigned certification identifier or the reason that the source was not certified for beneficial use.

(d) If the coal ash is certified, the generator shall submit regular monitoring information to demonstrate that the coal ash continues to meet the requirements for certification. This information shall be submitted on dates specified by and on forms provided by the Department. At a minimum, monitoring requirements shall consist of the following:

(1) At least one representative sample analysis of the coal ash submitted every 3 months.

(2) Collection of a representative sample for analysis whenever there is a change in operation of the combustion unit generating the coal ash or a change in the fuel source that could result in a significant increase in a coal ash chemical parameter or a change in physical properties that could adversely impact slope stability, compaction characteristics or site hydrology.

(3) Prior to January 31, a yearly report that includes the weight in dry tons of coal ash produced for beneficial use in the previous calendar year, an estimate of the volume in cubic yards and the locations, such as mine sites, where the coal ash was delivered.

(e) The coal ash generator shall notify the Department of any changes to the information filed in the certification application or of any evidence that the coal ash may not meet certification requirements.

§ 290.202. Revocation of certification.

(a) The Department will revoke certification for a source of coal ash if any of the following occur:

(1) The generator fails to comply with monitoring requirements as described in § 290.201(d) (relating to coal ash certification).

(2) The coal ash exceeds certification standards and the generator fails to make an acceptable demonstration as described in § 290.203 (relating to exceedance of certification requirements).

(3) There are physical or chemical characteristics that make the coal ash unsuitable for beneficial use.

(b) If certification is revoked, the coal ash cannot be used at a coal mining activity site or an abandoned mine land site in this Commonwealth unless the generator requests recertification under subsection (c) and the coal ash is recertified by the Department.

(c) The generator of coal ash that had its certification revoked may request recertification. For certification to be reinstated, the generator shall demonstrate to the Department's satisfaction that:

(1) A detailed chemical analysis on three recent monthly representative samples establish that the coal ash meets the certification requirements.

(2) There are no other physical or chemical characteristics that make the coal ash unsuitable for beneficial use.

§ 290.203. Exceedance of certification requirements.

(a) If the coal ash sample analysis results exceed any certification standard, the generator shall submit to the Department within 30 days of receiving the results of exceedance the following:

(1) In the case of laboratory error, documentation and an explanation from the laboratory of the type of error.

This information shall be accompanied by a corrected sample analysis or additional sample results demonstrating that the coal ash meets the requirements in § 290.201(a) (relating to coal ash certification).

(2) A demonstration that the sample analysis is anomalous by providing the following:

(i) A comparison of the anomalous sample with prior coal ash samples.

(ii) Additional sample results demonstrating that the coal ash meets the criteria.

(iii) A plan for temporary increase in coal ash monitoring.

(iv) An explanation of the cause of the exceedance and how further exceedances will be avoided.

(b) If the generator demonstrates to the satisfaction of the Department that the exceedance is an anomaly, the coal ash may continue to be beneficially used. Failure to provide this demonstration will result in revocation of beneficial use certification for the source.

Subchapter D. WATER QUALITY MONITORING

Sec.

290.301. Water quality monitoring.

290.302. Number, location and depth of monitoring points.

290.303. Standards for wells and casing of wells.

290.304. Assessment plan.

290.305. Abatement plan.

290.306. Recordkeeping.

290.307. Interim water quality monitoring requirements.

§ 290.301. Water quality monitoring.

(a) A water quality monitoring plan shall be submitted to the Department for approval prior to placement or storage of coal ash when required under this chapter.

(b) At a minimum, the water quality monitoring plan must include the following information:

(1) The location and design of downgradient and upgradient monitoring points.

(2) A minimum of 12 background samples from each monitoring point taken at monthly intervals prior to placement of coal ash, unless a greater number or frequency is required by the Department.

(3) The samples to be taken quarterly after approval from each monitoring point, unless a greater number or frequency is required by the Department.

(c) The person taking the samples and the laboratory performing the analysis required under this section shall employ the quality assurance/quality control procedures described in the EPA's "Handbook for Analytical Quality Control in Water and Wastewater Laboratories" (EPA 600/4-79-019) or "Test Methods for Evaluating Solid Waste" (SW-846).

(d) The analytical methodologies used to meet the requirements of this section must be those in the most recent edition of the EPA's "Test Methods for Evaluating Solid Waste" (SW-846), "Methods for Chemical Analysis of Water and Wastes" (EPA 600/4-79-020), "Standard Methods for Examination of Water and Wastewater," prepared and published jointly by the American Public Health Association, American Waterworks Association, and Water Pollution Control Federation or a comparable method approved by the EPA or the Department. The laboratory making any chemical analysis for water quality monitoring must be in compliance with 27 Pa.C.S. Chapter 41 (relating to environmental laboratory accreditation).

(e) Samples shall be analyzed for pH (determined in the field and in the laboratory), temperature (determined

in the field), specific conductance (at 25° C; determined in the field), alkalinity, acidity, sulfate, chloride, fluoride, nitrate, nitrite, ammonia, and total suspended solids without filtration.

(f) Samples shall be analyzed for total and dissolved aluminum, antimony, arsenic, barium, beryllium, boron, cadmium, calcium, chromium, cobalt, copper, iron, lead, magnesium, manganese, mercury, molybdenum, nickel, potassium, selenium, silver, sodium, thallium, vanadium, and zinc. In addition, the static water elevation for monitoring wells and the flow for springs, seeps and mine discharges must be measured.

(g) Additional parameters may be required by the Department based on conditions at the site and the specific characteristics of the coal ash being beneficially used.

(h) Water quality monitoring shall continue quarterly for a minimum of 5 years after final placement or storage of coal ash at the site, and annually thereafter from the end of year 5 through 10 years after final placement or storage of coal ash at the site. The Department may require more frequent or longer water quality monitoring if the results of water quality monitoring indicate that contamination may be occurring.

(i) Water quality monitoring data shall be submitted quarterly to and in the format required by the Department. Water quality monitoring data shall be submitted to the Department annually from the end of year 5 through 10 years after final placement or storage of coal ash at the site.

(j) The person required to develop and implement a water quality monitoring plan in accordance with § 290.101(d) (relating to general requirements for beneficial use) shall demonstrate attainment with applicable groundwater or surface water remediation standards as required in the event of groundwater or surface water degradation attributable to the placement of the coal ash. The applicable groundwater remediation standards are identified in §§ 290.304 and 290.305 (relating to assessment plan; and abatement plan).

§ 290.302. Number, location and depth of monitoring points.

(a) The water quality monitoring system shall accurately characterize groundwater and surface water flow, groundwater and surface water chemistry and flow systems on the site and adjacent area. The system must consist of the following:

(1) At least one monitoring point at a position hydraulically upgradient from the coal ash placement area in the direction of increasing static head that is capable of providing representative data of groundwater not affected by placement of coal ash, except when the coal ash placement area occupies the most upgradient position in the flow system. In that case, sufficient downgradient monitoring points shall be placed to determine the extent of adverse effects on groundwater from the coal ash placement.

(2) At least three groundwater monitoring points hydraulically downgradient in the direction of decreasing static head from the area in which coal ash has been or will be placed. The Department at its discretion may accept two downgradient monitoring points on small sites that can be well represented by two points. The Department may allow one or more springs, seeps and mine discharges to substitute for wells if these points are hydraulically downgradient from the area in which coal

ash has been or will be placed and if these points will be as effective or more effective at monitoring the coal ash placement area than wells. Downgradient monitoring points must be hydrologically connected to the area of coal ash placement, and must be located and constructed so as to detect any chemical influence of the coal ash placement area. The downgradient points must be proximate enough to detect contaminants within the life of the placement operation. All monitoring points must be developed and protected in a manner approved by the Department.

(3) Surface water monitoring points where surface water monitoring is likely to show any chemical influence that the coal ash placement area may have on the hydrologic regime.

(b) The upgradient and downgradient monitoring points shall be:

(1) Sufficient in number, location and depth to be representative of water quality.

(2) Located so as not to interfere with routine operations at the site.

(3) Located within 200 feet of the coal ash placement area or mining activity area, except as necessary to comply with subsections (c) and (d). The Department may approve location at a greater distance based on the hydrology of the coal ash placement and adjacent areas.

(c) In addition to the requirements of subsection (b), upgradient monitoring points shall be located so that they will not be affected by effects on groundwater or surface water from the coal ash placement area.

(d) In addition to the requirements of subsection (b), downgradient monitoring points shall be located so that they will provide early detection of effects on groundwater or surface water from the coal ash placement area.

(e) Wells drilled under this section shall be drilled by drillers licensed under the Water Well Drillers License Act (32 P. S. §§ 645.1—645.13).

(f) The well materials shall be decontaminated prior to installation.

§ 290.303. Standards for wells and casing of wells.

(a) A monitoring well shall be cased as follows:

(1) The casing must maintain the integrity of the monitoring well borehole and be constructed of material that will not react with the groundwater being monitored.

(2) The minimum casing diameter must be 4 inches unless otherwise approved by the Department in writing.

(3) The well must be constructed with a screen that meets the following requirements:

(i) The screen must be factory-made.

(ii) The screen may not react with the groundwater being monitored.

(iii) The screen must maximize open area to minimize entrance velocities and allow rapid sample recovery.

(4) The well must be filter-packed with chemically inert clean quartz sand, silica or glass beads, unless otherwise approved by the Department. The material must be well-rounded and dimensionally stable.

(5) The casing must extend at least 1 foot aboveground, unless the Department has approved flush mount wells.

(6) The annular space above the sampling depth must be sealed to prevent contamination of samples and the groundwater.

(7) The casing must be designed and constructed to prevent cross contamination between surface water and groundwater.

(8) Alternative casing designs for wells in stable formations may be approved by the Department.

(b) Monitoring well casings must be enclosed in a protective casing that must:

(1) Be of sufficient strength to protect the well from damage by heavy equipment and vandalism.

(2) Be installed for at least the upper 10 feet of the monitoring well, as measured from the well cap, with a maximum stick up of 3 feet, unless otherwise approved by the Department in writing.

(3) Be grouted and placed with a concrete collar at least 3 feet deep to hold it firmly in position.

(4) Be numbered for identification with a label capable of withstanding field conditions.

(5) Protrude above the monitoring well casing.

(6) Have a locked cap.

(7) Be made of steel or other material of equivalent strength.

§ 290.304. Assessment plan.

(a) A person shall prepare and submit to the Department an assessment plan within 60 days after one of the following occurs:

(1) Data obtained from water quality monitoring by the Department or the person indicates statistically significant degradation. Statistical evaluation of water quality monitoring data shall be made using one or more of the methods in 40 CFR 258.53(g) and (h) (relating to groundwater sampling and analysis requirements).

(2) Laboratory analysis of one or more public or private water supplies indicates groundwater or surface water contamination is occurring that could reasonably be attributed to the coal ash placement.

(b) An assessment under this section must consist of chemical data and a supporting narrative, if one of the following applies:

(1) Within 10 working days after receipt of sample results indicating groundwater or surface water degradation, the person resamples the affected monitoring points and analysis from resampling shows, to the Department's satisfaction, that groundwater or surface water degradation has not occurred.

(2) Within 20 working days after receipt of sample results indicating groundwater or surface water degradation, the person demonstrates that the degradation was caused by seasonal variations or activities unrelated to coal ash placement.

(c) The assessment plan must specify the manner in which the person will determine the existence, quality, quantity, areal extent and depth of groundwater or surface water degradation and the rate and direction of migration of contaminants. An assessment plan shall be prepared and sealed by a professional geologist licensed to practice in this Commonwealth. The plan must contain the following information:

(1) For wells, lysimeters, borings, pits, piezometers, springs, seeps, mine discharges and other assessment structures or devices, the number, location, size, casing type and depth, as appropriate. If the assessment points are wells, they shall be constructed in accordance with

§§ 290.302 and 290.303 (relating to number, location and depth of monitoring points; and standards for wells and casing of wells).

(2) The sampling and analytical methods for the parameters to be evaluated.

(3) The evaluation procedures, including the use of previously gathered groundwater or surface water quality and quantity information, to determine the concentration, rate and extent of groundwater or surface water degradation from the facility.

(4) A biological assessment of surface water, if required by the Department.

(5) An implementation schedule.

(6) Identification of the abatement standard that will be met.

(d) The assessment plan shall be implemented upon approval by the Department in accordance with the approved implementation schedule, and shall be completed in a reasonable time not to exceed 6 months, unless otherwise approved by the Department. If the Department determines that the proposed plan is inadequate, it may modify the plan and approve the plan as modified. If the groundwater or surface water assessment indicates that contamination is leaving the coal ash placement site, the person shall notify, in writing, each owner of a private or public water supply that is located within 1/2-mile downgradient of the coal ash placement area that an assessment has been initiated.

(e) Within 45 days after the completion of the assessment plan, the person shall submit a report containing the new data collected, analysis of the data and recommendations on the necessity for abatement.

(f) If the Department determines after review of the assessment report that implementation of an abatement plan is not required under § 290.305 (relating to abatement plan), the person shall submit a revised water quality monitoring plan to the Department for approval that contains any necessary changes to the plan and an application for permit modification, if applicable. The person shall implement the modifications within 30 days of the Department's approval.

(g) This section does not prevent the Department from requiring or the person from conducting abatement or water supply replacement concurrently with or prior to implementation of the assessment.

§ 290.305. Abatement plan.

(a) The person that is required to conduct water quality monitoring as part of coal ash beneficial use or storage shall prepare and submit to the Department an abatement plan whenever one of the following occurs:

(1) The assessment plan prepared and implemented under § 290.304 (relating to assessment plan) shows the presence of groundwater or surface water degradation for one or more contaminants at one or more monitoring points and the analysis indicates that an abatement standard will not be met at the compliance points.

(2) Monitoring by the Department or person shows the presence of an abatement standard exceedance from one or more compliance points even if an assessment plan has not been completed. The person is not required to implement an abatement plan under this paragraph if the following apply:

(i) Within 10 days after receipt of sample results showing an exceedance of an abatement standard at a point of compliance, the person resamples the affected monitoring points.

(ii) Analysis from resampling shows to the Department's satisfaction that an exceedance of an abatement standard has not occurred.

(3) A biological assessment of surface water implemented under § 290.304(c)(4) shows a detrimental effect on biota is occurring.

(b) An abatement plan shall be prepared and sealed by a professional geologist licensed to practice in this Commonwealth. The plan must contain the following information:

(1) The specific methods or techniques to be used to abate groundwater or surface water degradation at the facility.

(2) The specific methods or techniques to be used to prevent further groundwater or surface water degradation from the facility.

(3) A schedule for implementation.

(c) If abatement is required in accordance with subsection (a), the person shall demonstrate compliance with one or more of the following standards at the identified compliance points:

(1) For constituents for which Statewide health standards exist, the Statewide health standard for that constituent at and beyond 500 feet of the perimeter of the coal ash placement area or at and beyond the property boundary, whichever is closer.

(2) The background standard for constituents at and beyond 500 feet of the perimeter of the coal ash placement area or at and beyond the property boundary, whichever is closer. Load-based standards at groundwater discharge points are acceptable if a permit was issued under Chapter 87, Subchapter F or Chapter 88, Subchapter G (relating to surface coal mines: minimum requirements for remining areas with pollutional discharges; and anthracite surface mining activities and anthracite bank removal and reclamation activities: minimum requirements for remining areas with pollutional discharges).

(3) For constituents for which no primary MCLs under the Federal and State Safe Drinking Water Acts (42 U.S.C.A. §§ 300f—300j-18; and 35 P.S. §§ 721.1—721.17) exist, the risk-based standard at and beyond 500 feet of the perimeter of the coal ash placement area or at and beyond the property boundary, whichever is closer, if the following conditions are met:

(i) The risk assessment used to establish the standard assumes that human receptors exist at the property boundary.

(ii) The level is derived in a manner consistent with the health risk assessment portions of the Department's *Land Recycling Program Technical Guidance Manual* (253-0300-100) or other standard procedures commonly used in the environmental field for assessing the health risks of environmental pollutants.

(iii) The level is based on scientifically valid studies conducted in accordance with good laboratory practice standards (40 CFR Part 792 (relating to good laboratory practice standards)) promulgated under the Toxic Substances Control Act (15 U.S.C.A. §§ 2601—2692) or other scientifically valid studies approved by the Department.

(iv) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level of 1×10^{-5} at the property boundary.

(d) For measuring compliance with secondary contaminants under subsection (c)(1) or (3), the Department may approve a compliance point beyond 500 feet on land owned by the owner of the coal ash placement area.

(e) The abatement plan shall be completed and submitted to the Department for approval within 90 days of the time the obligation arises under this section unless the date is otherwise modified, in writing, by the Department.

(f) If the Department determines that the proposed plan is inadequate, the Department may modify the plan and approve the plan as modified or require the submission of an approvable modification.

(g) The abatement plan shall be implemented within 60 days of approval by the Department in accordance with the approved implementation schedule.

(h) If, after plan approval or implementation, the Department finds that the plan is incapable of achieving the groundwater or surface water protection contemplated in the approval, the Department may issue one or more of the following:

(1) An order requiring the person to submit proposed modifications to the abatement plan.

(2) An order requiring the person to implement the abatement plan as modified by the Department.

(3) Another order the Department deems necessary to aid in the enforcement of the acts.

§ 290.306. Recordkeeping.

A person subject to the requirements of this subchapter shall retain records of analyses and evaluations of monitoring data and groundwater elevations required under this subchapter for a minimum of 3 years after water quality monitoring ceases and make the records available to the Department upon request.

§ 290.307. Interim water quality monitoring requirements.

This section applies to sites where coal ash has been stored or placed for beneficial use prior to December 11, 2010, and continues to be stored or placed for beneficial use following December 11, 2010.

(1) For sites not previously subject to water quality monitoring requirements:

(i) A water quality monitoring plan meeting the requirements of § 290.301(b)(1) and (3) (relating to water quality monitoring) shall be submitted to the Department by December 12, 2011.

(ii) The water quality monitoring plan shall be implemented within 1 year of the Department's approval of the plan.

(2) For sites previously subject to water quality monitoring requirements:

(i) New monitoring points and replacement wells constructed after December 11, 2010, must comply with the requirements in §§ 290.302(b)—(f) and 290.303 (relating to number, location and depth of monitoring points; and standards for wells and casing of wells).

(ii) All water quality monitoring after March 11, 2011, must include the parameters in § 290.301(e) and (f) and any parameters added by the Department based onsite conditions in accordance with § 290.301(g).

Subchapter E. COAL ASH STORAGE

Sec.

- 290.401. Design and operation.
- 290.402. Duration of storage.
- 290.403. Surface and groundwater protection.
- 290.404. Areas where coal ash storage is prohibited.
- 290.405. Storage piles—general requirements.
- 290.406. Storage piles—storage pad or liner system.
- 290.407. Storage piles—leachate and runoff control.
- 290.408. Storage impoundments—scope.
- 290.409. Storage impoundments—general requirements.
- 290.410. Storage impoundments—design requirements.
- 290.411. Storage impoundments—operating requirements.
- 290.412. Storage impoundments—failure.
- 290.413. Storage impoundments—inspections.
- 290.414. Storage areas—closure.
- 290.415. Interim requirements for sites where coal ash has been stored.

§ 290.401. Design and operation.

(a) A person storing coal ash shall employ best engineering design and construction practices for all phases of construction and operation.

(b) A person may not store coal ash in a manner that exceeds the design capacity of the storage facility.

(c) The Department may require a person to install a water quality monitoring system in accordance with Subchapter D (relating to water quality monitoring) if storage of the coal ash has the potential to cause groundwater degradation.

(d) A person storing coal ash shall routinely inspect the facility, its equipment and the surrounding area for evidence of failure and shall immediately take necessary corrective actions. The person shall maintain records of inspections and corrective actions that were taken for a minimum of 3 years, and make the records available to the Department upon request.

§ 290.402. Duration of storage.

(a) Coal ash may not be stored as follows:

(1) For more than 1 year unless a minimum of 75% of the volume of the coal ash being stored is used or processed for beneficial use in the previous calendar year commencing on January 1st.

(2) For more than 90 days unless it is stored on an impermeable floor or pad and either in an enclosed facility or in an area where runoff is collected and treated. The Department may waive or modify, in writing, this requirement if there is no runoff from the storage.

(b) The Department will presume that a person storing coal ash contrary to subsection (a) is operating a waste disposal facility and is subject to the applicable requirements of the act and regulations thereunder for waste disposal.

(c) A person that stores coal ash shall maintain for a minimum of 3 years accurate operational records that are sufficiently detailed to demonstrate to the Department that coal ash is being stored under subsection (a). The records shall be made available to the Department upon request. The presumption in subsection (b) may be overcome by the operational records required by this subsection.

§ 290.403. Surface and groundwater protection.

(a) Surface water runoff from storage areas shall be minimized. Stormwater shall be managed in accordance with The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and the regulations promulgated thereunder.

(b) Surface water run-on to storage areas shall be minimized.

(c) Coal ash may not be stored in a manner that causes groundwater or surface water degradation.

§ 290.404. Areas where coal ash storage is prohibited.

(a) Coal ash storage areas, other than areas where the coal ash is totally enclosed and stored on an impermeable floor, temporary coal ash storage piles or storage impoundments, may not be operated as follows, unless otherwise authorized by the Department in writing:

(1) Within 100 feet of an intermittent or perennial stream, other than exceptional value or high quality waters as defined in § 93.1 (relating to definitions).

(2) Within 300 feet of exceptional value or high quality waters as defined in § 93.1.

(3) Within 300 feet of a groundwater water source.

(4) Within 1,000 feet upgradient of a surface drinking water source.

(5) Within 25 feet of a bedrock outcrop, unless the outcrop is properly treated to minimize infiltration into fractured zones.

(6) Within 100 feet of a sinkhole or area draining into a sinkhole.

(7) Within 100 feet of a wetland, other than an exceptional value wetland.

(8) In or within 300 feet of an exceptional value wetland.

(b) Coal ash storage impoundments may not be operated as follows:

(1) In the 100-year floodplain of waters of this Commonwealth.

(2) In or within 100 feet of a wetland other than an exceptional value wetland.

(3) In or within 300 feet of an exceptional value wetland.

(4) In an area where the operation would result in the elimination, pollution or destruction of a portion of an intermittent stream or perennial stream.

(5) Within 100 feet of an intermittent stream or perennial stream, other than exceptional value or high quality waters as defined in § 93.1.

(6) Within 300 feet of exceptional value or high quality waters as defined in § 93.1.

(7) In areas underlain by limestone or carbonate formations, where the formations are greater than 5 feet thick and present at the topmost geologic unit. These areas include areas mapped by the "Pennsylvania Geological Survey" as underlain by these formations, unless competent geologic studies certified by a professional geologist licensed to practice in this Commonwealth demonstrate the absence of limestone and carbonate formations under the site.

(8) Within 900 feet measured horizontally from an occupied dwelling, unless the owner of the dwelling has provided a written waiver consenting to the coal ash storage impoundment being closer than 900 feet. A waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the owner. A closed coal ash storage impoundment that submits an application to reopen and expand shall also be subject to this paragraph.

(9) Within 100 feet of a property line, unless the current owner has provided a written consent to the coal

ash storage impoundment being closer than 100 feet. The waiver shall be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver from the current owner.

(10) Within 1/4 mile upgradient, and within 300 feet downgradient, of a private or public water source, except that the Department may waive or modify the isolation distances to a private water source if the person demonstrates and the Department finds, in writing, that the following conditions have been met:

(i) The owners of the private water sources in the isolation area have consented, in writing, to the location of the proposed the coal ash storage impoundment.

(ii) The person storing coal ash and each water source owner have agreed, in writing, that the person will construct and maintain at the person's expense a permanent alternative water supply of like quantity and quality at no additional cost to the water source owner if the existing source is adversely affected by the coal ash storage impoundment.

(iii) The person storing coal ash has demonstrated that a replacement water source is technically and economically feasible and readily available for every private water source in the isolation area.

(11) Within 900 feet of the following:

(i) A building that is owned by a school district or school and used for instructional purposes.

(ii) A park.

(iii) A playground.

(12) In areas that serve as habitat for fauna or flora listed as "threatened" or "endangered" under the Endangered Species Act of 1973 (7 U.S.C.A. § 136; 16 U.S.C.A. §§ 4601-9, 460k-1, 668dd, 715i, 715a, 1362, 1371, 1372, 1402 and 1531-1543), the Wild Resource Conservation Act (32 P.S. §§ 5301-5314), 30 Pa.C.S. (relating to the Fish and Boat Code) or 34 Pa.C.S. (relating to the Game and Wildlife Code), unless the applicant demonstrates compliance with applicable Federal and State requirements that would allow operations in those areas.

(c) Temporary coal ash storage piles may not be operated as follows:

(1) Within 100 feet of an intermittent or perennial stream, other than exceptional value or high quality waters as defined in § 93.1.

(2) Within 300 feet of exceptional value or high quality waters as defined in § 93.1.

(3) Within 100 feet of a wetland, other than an exceptional value wetland.

(4) In or within 300 feet of an exceptional value wetland.

§ 290.405. Storage piles—general requirements.

(a) A person storing coal ash in piles shall minimize the dispersal of coal ash by wind or water erosion.

(b) The coal ash being stored shall be separated from the water table by at least 4 feet without the use of a groundwater pumping system. The Department may waive, in writing, this requirement.

(c) A person storing coal ash in a pile, other than a temporary coal ash storage pile, shall design, install and maintain berms around the storage area and other structures or facilities to collect and, when necessary, treat runoff or leachate, or both, from the storage area.

The Department may waive, in writing, the berm requirement when other collection methods are in place.

(d) For storage piles without a liner system or storage pad, the Department may require the person to install and implement water quality monitoring in accordance with Subchapter D (relating to water quality monitoring) where site conditions warrant.

§ 290.406. Storage piles—storage pad or liner system.

(a) A person that installs a storage pad or liner system to prevent groundwater degradation shall meet the requirements of this section. This section does not preclude a person from using other means to prevent groundwater degradation, such as enclosure in a building.

(b) The storage pad or liner system must meet the following requirements:

(1) Prevent the migration of leachate through the storage pad or liner system.

(2) May not be adversely affected by the physical or chemical characteristics of coal ash, coal ash constituents or leachate from the coal ash storage piles.

(3) Be designed, constructed and maintained to protect the integrity of the pad or liner during the storage of coal ash.

(4) Be designed to collect leachate and runoff.

(5) Be constructed of nonsolid waste and noncoal ash material.

(6) Be no less permeable than 1×10^{-7} cm/sec., as demonstrated by field and laboratory testing.

(7) Be inspected for uniformity, damage and imperfections during construction and installation.

(c) The person shall install and operate a monitoring system capable of verifying whether coal ash or leachate has penetrated the pad or liner, if required by the Department.

(d) Coal ash may not be stored where continuous or intermittent contact could occur between the coal ash and groundwater or surface water.

§ 290.407. Storage piles—leachate and runoff control.

(a) A person that installs a storage pad or liner system shall collect leachate and runoff from the coal ash pile and divert it into a leachate storage or treatment system.

(b) A leachate storage system must consist of a collection tank or surface impoundment. The tank or impoundment must be:

(1) Sized for the anticipated leachate and runoff flow, including a 30-day reserve capacity.

(2) Chemically compatible with the leachate.

(3) Of sufficient strength to withstand expected loads.

(4) Equipped with cleanouts, if necessary.

(5) Sealed to prevent the loss of leachate and runoff.

(c) Collected leachate shall be treated or disposed in a manner that complies with the act, The Clean Streams Law (35 P.S. §§ 691.1-691.1001), and the regulations promulgated thereunder.

§ 290.408. Storage impoundments—scope.

(a) This section and §§ 290.409-290.415 apply to persons that store coal ash in surface impoundments prior to beneficial use.

(b) This section and §§ 290.409—290.415 do not apply to the storage impoundments that are designed for the express purpose of storing stormwater runoff and that store runoff composed entirely of stormwater. Impoundments that store stormwater runoff must comply with the applicable requirements of The Clean Streams Law (35 P.S. §§ 691.1—691.1001), section 13 of the Stormwater Management Act (32 P.S. § 680.13) and Chapters 92a, 102 and 105 (relating to national pollutant discharge elimination system permitting, monitoring and compliance; erosion and sediment control; and dam safety and waterway management).

(c) For purposes of this section, “stormwater” means drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.

§ 290.409. Storage impoundments—general requirements.

A person that operates a storage impoundment to hold coal ash shall meet the following conditions:

(1) Hold a valid permit from the Department for the storage under sections 308 and 402 and other applicable provisions of The Clean Streams Law (35 P.S. §§ 691.1—691.1001), Chapter 91 (relating to general provisions) and other applicable regulations promulgated thereunder, and shall comply with the permit.

(2) Comply with Chapter 105 (relating to dam safety and waterway management).

§ 290.410. Storage impoundments—design requirements.

Impoundments used to store coal ash must meet the following minimum design criteria:

(1) The liner system for a coal ash storage impoundment must include the following elements:

(i) The subbase, which is the prepared layer of soil or earthen material upon which the remainder of the liner system is constructed.

(ii) The leachate detection zone, which is a prepared layer placed on top of the subbase and upon which the liner is placed, and in which a leachate detection system is located.

(iii) The composite liner, which is a continuous layer of synthetic material over earthen material, placed on the leachate detection zone. The upper component is no more permeable than 1.0×10^{-7} cm/sec. based on laboratory testing. The composite component is no more permeable than 1.0×10^{-6} cm/sec., based on laboratory testing and field testing.

(iv) The protective cover and leachate collection zone, which is a prepared layer placed over the liner in which a leachate collection system is located.

(2) The bottom of the subbase of the liner system cannot be in contact with the water table without the use of groundwater pumping systems.

(3) The subbase must meet the following performance standards. The subbase must:

(i) Bear the weight of the liner system, coal ash, and equipment operating on the coal ash storage impoundment without causing or allowing a failure of the liner system.

(ii) Accommodate potential settlement without damage to the liner system.

(iii) Be a barrier to the transmission of liquids.

(iv) Cover the bottom and sidewalls of the coal ash storage impoundment.

(4) The leachate detection zone must meet the following performance standards. The leachate detection zone must:

(i) Rapidly detect and collect liquid entering the leachate detection zone, and rapidly transmit the liquid to the leachate treatment system.

(ii) Withstand chemical attack from coal ash or leachate.

(iii) Withstand anticipated loads, stresses and disturbances from overlying coal ash and equipment operation.

(iv) Function without clogging.

(v) Prevent the liner from puncturing, cracking, tearing, stretching or otherwise losing its physical integrity.

(vi) Cover the bottom and sidewalls of the coal ash storage impoundment.

(5) The liner must meet the following standards of performance:

(i) The liner must prevent the migration of leachate through the liner to the greatest degree that is technologically possible.

(ii) The effectiveness of the liner in preventing the migration of leachate may not be adversely affected by the physical or chemical characteristics of the coal ash or leachate from the coal ash storage impoundment.

(iii) The liner must be resistant to physical failure, chemical failure, and other failure.

(iv) The liner must cover the bottom and sidewalls of the coal ash storage impoundment.

(6) The protective cover must meet the following performance standards. The protective cover must:

(i) Protect the primary liner from physical damage from stresses and disturbances from overlying coal ash and equipment operation.

(ii) Protect the leachate collection system within the protective cover from stresses and disturbances from overlying coal ash and equipment operation.

(iii) Allow the continuous and free flow of leachate into the leachate collection system within the protective cover.

(iv) Cover the bottom and sidewalls of the coal ash storage impoundment.

(7) The leachate collection system within the protective cover must meet the following performance standards. The leachate collection system must:

(i) Ensure that free flowing liquids and leachate will drain continuously from the protective cover to the leachate treatment system.

(ii) Withstand chemical attack from leachate.

(iii) Withstand anticipated loads, stresses and disturbances from overlying coal ash and equipment operation.

(iv) Function without clogging.

(v) Cover the bottom and sidewalls of the coal ash storage impoundment.

(8) An onsite leachate storage system shall be part of each leachate treatment method used by the person. The storage system must contain impoundments or tanks for storage of leachate. The tanks or impoundments must have a storage capacity at least equal to the maximum expected production of leachate for a 30-day period. No

more than 25% of the total leachate storage capacity may be used for flow equalization on a regular basis. Leachate storage capacity may not be considered to include leachate that may have collected in or on the liner system.

(9) Leachate may be collected and handled by one of the following:

(i) Onsite treatment and discharged into a receiving stream under a permit issued by the Department under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and regulations thereunder, if the Department approves this method in the permit.

(ii) Direct discharge into a permitted publicly-owned treatment works, following pretreatment, if pretreatment is required by Federal, State or local law or by discharge into another permitted treatment facility.

(iii) Transport to an offsite treatment facility that is operating in compliance with The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and regulations thereunder, and is otherwise capable of accepting and treating leachate from the coal ash storage impoundment.

(10) Impoundments must be designed, constructed, operated and maintained in accordance with the following:

(i) An impoundment must have sufficient freeboard to prevent overtopping, including overtopping caused by the 24-hour precipitation event in inches to be expected once in 25 years. The freeboard may not be less than 2 feet.

(ii) The dike must have sufficient structural integrity to prevent failure. The liner system of the impoundment may not be considered in determining the structural integrity of the dike.

(iii) The inside slope shall be designed and constructed with sufficient protective cover to prevent wind and water erosion, and to preserve the structural integrity of the dike.

(iv) The dike must be capable of withstanding anticipated static and dynamic loadings with a minimum safety factor for the most critical failure surface of 1.5 for static loading and 1.2 for dynamic loading.

(v) The outside slopes of the dike may not exceed 25% unless the following requirements are met:

(A) A horizontal terrace with a minimum width of 10 feet is constructed at each 20-foot vertical rise of the slope, or the Department approves in the permit a terrace with different dimensions.

(B) Surface water on the terrace is collected and discharged so that it does not erode or otherwise adversely affect the stability of the dike.

(C) The final slope does not exceed 50%.

(vi) Dikes and berms must be free of burrowing mammals and plants with root systems capable of displacing earthen materials upon which the structural integrity of the dikes or berms is dependent.

(vii) An impoundment must be surrounded by structures sufficient to prevent surface runoff from a 25-year, 24-hour precipitation event from entering the impoundment.

§ 290.411. Storage impoundments—operating requirements.

(a) At least 8 feet shall be maintained between the bottom of the subbase of the liner system and the top of the confining layer or the shallowest level below the bottom of the subbase where groundwater occurs as a

result of upward leakage from natural or other preexisting causes. The integrity of the confining layer may not be compromised by excavation.

(b) The edge of the liner shall be clearly marked.

(c) A fence or other suitable barrier shall be maintained around the coal ash storage area, including impoundments, leachate collection and treatment systems sufficient to prevent unauthorized access, unless the Department approves, in the permit, an alternative means of protecting access to the area that afford an equivalent degree of protection.

(d) The person shall implement fugitive air contaminant control measures and otherwise prevent and control air pollution in accordance with the Air Pollution Control Act (35 P. S. §§ 4001—4015); Article III (relating to air resources) and § 289.228 (relating to nuisance minimization and control). Minimization and control measures must include the following:

(1) Ensuring that operation of the coal ash storage impoundment will not cause or contribute to an exceedance of an ambient air quality standard under § 131.3 (relating to ambient air quality standards).

(2) Minimizing the generation of fugitive dust emissions from the coal ash storage impoundment.

(e) The person shall implement water quality monitoring, as required under Subchapter D (relating to quality monitoring).

(f) A person that stores coal ash in a coal ash storage impoundment shall remove coal ash from the impoundment as follows:

(1) Without damage to the impoundment.

(2) Inspect the liner to ensure its integrity, and make necessary repairs prior to returning the impoundment to service.

(3) Provide for the beneficial use of the removed coal ash in accordance with this chapter.

(4) Removal from the impoundment shall be sufficient such that the coal ash is not accumulated speculatively.

§ 290.412. Storage impoundments—failure.

(a) If a coal ash storage impoundment fails, the person storing coal ash shall immediately:

(1) Stop adding coal ash to the impoundment.

(2) Contain any discharge that has occurred or is occurring.

(3) Empty the impoundment in a manner approved by the Department, if leaks cannot be stopped.

(4) Notify the Department of the failure of the impoundment and the measures taken to remedy the failure.

(b) A coal ash storage impoundment that has been removed from service due to failure may not be restored to service unless the following conditions are met:

(1) The impoundment has been repaired.

(2) The repair has been certified to the Department, in writing, by a registered professional engineer.

(3) The Department has approved, in writing, the restoration of the impoundment to service.

(c) If a storage impoundment fails and the impoundment or surrounding area cannot be cleaned up in a

manner that is satisfactory to the Department, the impoundment shall be closed in accordance with this section.

§ 290.413. Storage impoundments—inspections.

The Department will inspect storage impoundments in accordance with the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27).

§ 290.414. Storage areas—closure.

Upon cessation of coal ash storage, the person storing coal ash shall remove coal ash and materials containing coal ash, and provide for the beneficial use or disposal of the coal ash and materials under the act and the regulations promulgated thereunder. The person shall also regrade and revegetate the site as required by the Department.

§ 290.415. Interim requirements for sites where coal ash has been stored.

For storage sites previously subject to rescinded § 299.153, which pertained to storage and containment of coal ash, the requirements of this subchapter must be met by December 12, 2011, unless the person storing the coal ash demonstrates to the Department's satisfaction through water quality monitoring data that the existing storage is protective of public health, safety and the environment.

(Editor's Note: The rescinded version of § 299.153 (relating to storage and containment of coal ash) appears at *Pennsylvania Code* pages 299-18 and 299-19 (serial pages (273866) and (273867)).

CHAPTER 299. STORAGE AND TRANSPORTATION OF RESIDUAL WASTE

**Subchapter A. STANDARDS FOR STORAGE OF RESIDUAL WASTE
TYPES OF WASTE**

§ 299.153. (Reserved).

[Pa.B. Doc. No. 10-2359. Filed for public inspection December 10, 2010, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF BARBER EXAMINERS

[49 PA. CODE CH. 3]

Student Records and Curriculum

The State Board of Barber Examiners (Board) adopts § 3.71a (relating to notification) and amends §§ 3.72, 3.87, 3.90 and 3.103, regarding student records in barber-shops and barber schools to read as set forth in Annex A.

Effective Date

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

Statutory Authority

This final-form rulemaking is authorized under section 15-A.4(b) of the act of June 19, 1931 (P. L. 589, No. 202) (63 P. S. § 566.4(b)), known as the Barbers' License Law (act).

Background, Purpose and Description of Final-Form Rule-making

Under section 3(a) of the act (63 P. S. § 553), prior to taking the barber's license examination, an applicant is required to have completed a barbering study and training period of at least 1,250 hours in not less than 9 months in either a licensed barbershop under the instruction of a licensed teacher or a licensed manager-barber, or in a licensed barber school under the instruction of a licensed teacher. Section 5 of the act (63 P. S. § 555) requires barbershops and barber schools to keep a daily record of the attendance of each student. The Board's existing regulations require barbershops and barber schools to maintain student records for inspection by the Board. As of May 2010, there were 16 licensed barber schools in this Commonwealth as compared to 2,134 barbershops. Currently, the Board is not notified that a student is training in a barbershop. Due to the large number of barbershops, it is not feasible for the Board to inspect all barbershops to determine whether a student is training in a shop at any given point in time. If the Board cannot determine whether a student is training in a shop, then the Board cannot ensure that the shop is keeping proper records and that either a barber-manager or barber-teacher is instructing the student. To remedy this situation, § 3.71a is being added to require the barber-shop owner or shop owner's designee to notify the Board, on a form provided by the Board, of each student to be trained in the shop before the student begins training. It also makes it clear that the shop owner is responsible for ensuring that the Board is properly notified of each student to be trained in the shop and for maintaining student records in a file available for inspection.

Section 5 of the act was amended on June 28, 2002, to eliminate the requirement for barbershops and barber schools to keep a record of blood test results. Currently, §§ 3.72(a) and 3.87(a) (relating to student's records) require barbershops and barber schools to keep a student's blood test results on file. The final-form rule-making deletes this requirement to be consistent with the amendments to the act.

Currently, § 3.72(b) requires a manager-barber or barber-teacher who is training a student in a barbershop to keep quarterly reports of the hours earned by the student. Likewise, § 3.87(b) requires barber schools to keep quarterly reports of the hours earned by the student. It is not feasible for the Board to inspect every barbershop and barber school on a quarterly basis to determine whether they are maintaining the quarterly hours as required. In addition, barbershops and barber schools are currently required to maintain student records for a 5-year period and to forward the student's file to the Board if the shop or school closes within the 5-year period. Situations have arisen in which a barber-shop or barber school has closed without forwarding its records to the Board, in which case some students have been unable to document that they had completed the training period required to take the barber's license examination. Therefore, §§ 3.72 and 3.87 are amended to require barbershops and barber schools, respectively, to submit quarterly reports of student hours to the Board so that the Board can ensure that the quarterly reports required under these sections are being properly maintained and that students would not be adversely affected if a barbershop or barber school failed to preserve its records for a 5-year period as required. The final-form rulemaking also amends § 3.72 to clarify that the barber-shop owner is responsible for keeping a student's records in a file.

On December 22, 2005, section 12(b) of the act (63 P. S. § 562(b)) was amended to delete the requirement that class and instruction hours in barber schools have to be not less than 7 hours nor more than 8 hours per day. Consistent with this statutory amendment, the final-form rulemaking deleted the language that was deleted from the act. In its previous form, § 3.90 (relating to student curriculum) did not address part-time work by students. The amendments to § 3.90 provide for part-time study by permitting a student to earn credit for the number of hours per day that the student is in attendance, up to a maximum of 8 hours of credit per day and 40 hours of credit per week. By permitting part-time study in barber schools, students who cannot attend barber school on a full-time basis will still have the opportunity to become barbers. In addition, the requirement that each student shall have an opportunity to devote at least 5 hours per day to practical work has been amended to provide that each student shall have an opportunity to devote at least 60% of class time to practical work.

The Board's existing regulations provide that a student may request a transfer of credits for hours or months of study between a barbershop and a barber school if the student passes a test that is based on the number of hours attended and the subjects pursued and the test is devised by the shop or school to place him in the appropriate courses. However, the regulations do not specify whether credits can be transferred from out-of-State barbershops and barber schools, nor do they provide for transfers of credits between barbershops. Therefore, § 3.90 is being amended to permit a student to request a transfer of credits for hours or months of study between barbershops, regardless of whether the barbershop is in-State or out-of-State and to clarify that credits can be transferred between a barbershop and a barber school, regardless of whether the barbershop or barber school is in-State or out-of State.

Finally, § 3.103 (relating to fees) is amended by adding a fee of \$30 for certification of student status or student training hours. This fee will cover the administrative cost of providing the certification upon request.

Summary of Comments and the Board's Response

The Board published the proposed rulemaking at 38 Pa.B. 5759 (October 18, 2008) requesting public comments within 30 days. No public comments were received. On November 17, 2008, the House Professional Licensure Committee (HPLC) met and voted not to take formal action on the proposed rulemaking until the final regulation is promulgated and to submit one comment to the Board. The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). On December 17, 2008, the Board received a letter from the Independent Regulatory Review Commission (IRRC) indicating that they did not have objections, comments or recommendations to offer on the proposed rulemaking.

The HPLC asked whether a student can request a transfer of credit hours between barber schools regardless of the in-State or out-of State location, as well as between barbershops and between barbershops and barber schools. The Board is aware that the transfer of credits between barber schools is complicated by the fact that some of the barber schools licensed by the Board are private licensed schools, some are community colleges, some are vocational-technical schools; and others are part of the Department of Corrections offered through the State correctional institutions. The Board prefers to leave questions regarding transfer of credits between two barber schools (whether in-State or out-of State) to the schools

themselves because individual school transfer policies are often linked to accreditation standards, host institution policies, articulation agreements between schools, the rules and regulations of other states and other factors. However, given that the goal of this final-form rulemaking is to expand opportunities for barber students to complete their education and be able to freely transfer credits whenever possible, the Board would encourage barber schools to consider the most expansive transfer policy possible within these constraints.

The Board has elected to make no changes to the final-form rulemaking based on the comment received.

Fiscal Impact and Paperwork Requirements

The Board is unable to determine the specific costs associated with the final-form rulemaking. It is anticipated that there will be some administrative costs to barbershops and schools in complying with the notification, recordkeeping and reporting requirements regarding students.

The final-form rulemaking will impose additional paperwork requirements upon the Commonwealth with respect to maintaining records of students being trained in barbershops and with maintaining quarterly reports. The final-form rulemaking will impose a minimal paperwork requirement upon the private sector by requiring shop owners to notify the Board, on a form provided by the Board, of each student to be trained in the shop. Barbershops and barber schools are already required to keep quarterly reports of the hours earned by a student. The regulation requiring barbershops and barber schools to submit the quarterly reports to the Board will not create additional paperwork; it will only require them to provide reports that should already exist.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 3, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 5759, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC 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 Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 3, 2010, this final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC, effective November 3, 2010.

Contact Person

Further information may be obtained by contacting Kelly Diller, Board Administrator, State Board of Barber Examiners, P. O. Box 2649, Harrisburg, PA 17105-2649.

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 the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no public comments were received.

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified this Preamble.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 3, are amended by adding § 3.71a and amending §§ 3.72, 3.87, 3.90 and 3.103 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

L. ANTHONY SPOSSEY,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6752 (November 20, 2010).)

Fiscal Note: Fiscal Note 16A-427 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 3. STATE BOARD OF BARBER EXAMINERS

STUDY IN BARBER SHOPS

§ 3.71a. Notification.

(a) The shop owner or the shop owner's designee shall notify the Board, on a form provided by the Board, of each student to be trained in the shop. Notification shall be provided to the Board before the student begins training.

(b) The shop owner is responsible for ensuring that proper notification is provided to the Board under subsection (a).

§ 3.72. Student's records.

(a) The shop owner shall keep, at all times and for inspection by the Board's representative, a file of each student which includes proofs of age, education, daily attendance and progress. The file shall be provided to the student at the student's request. The file shall be maintained for at least 5 years, beginning with the date when the student studies in the shop. If the shop is closed within this 5-year period, the student's file shall be forwarded to the Board and the student shall be so notified by the shop.

(b) A manager-barber or barber-teacher who is training a student under subsection (a) shall keep quarterly

reports of the hours earned by the student. The quarterly reports shall be provided to the student upon request.

(c) The shop owner is responsible for ensuring that the quarterly reports required under subsection (b) are properly maintained by the manager-barber or barber-teacher.

(d) The shop owner shall submit to the Board, on a form provided by the Board, a quarterly report of the hours earned by each student trained in the shop. The quarterly reports shall be submitted to the Board by the following dates—April 15, July 15, October 15 and January 15—for the preceding quarter. Each quarterly report must include the name and license number of the manager-barber or barber-teacher instructing the student and be personally signed by the shop owner and the student.

SCHOOLS OF BARBERING

§ 3.87. Student's records.

(a) Each school shall keep, at all times and for inspection by the Board's representative, a file of each student regarding proofs of age, education, daily attendance and progress. The file shall be provided to the student at the student's request. The file shall be maintained for at least 5 years, beginning with the date when the student attends the school. If the school is closed within this 5-year period, the student's files shall be forwarded to the Board and the students shall be so notified by the school.

(b) Each school shall keep quarterly reports of the hours earned by the student. The quarterly reports shall be provided to the student upon request.

(c) Each school shall submit to the Board, on a form provided by the Board, a quarterly report of the hours attended by each student. The quarterly reports shall be submitted by the following dates—April 15, July 15, October 15 and January 15—for the preceding quarter. Each quarterly report must include the names and license numbers of teachers employed by the school and be personally signed by the owner and supervisor of the school.

§ 3.90. Student curriculum.

(a) Each school shall post schedules showing the schedules of classes in theory and practical work. Each student shall have an opportunity to devote at least 60% of class time to practical work. For each of these class periods the teacher in charge shall keep an accurate daily record of attendance and progress of each student.

(b) A student may earn credit for the number of hours per day that the student is in attendance.

(c) A student may earn a maximum of 8 hours of credit per day and a maximum of 40 hours of credit per week.

(d) A student may not be given credit for hours attended unless the student is in actual attendance. Hours credited to a student should be devoted to the studying of barbering. Duty work may not exceed more than 10 minutes of the student instruction time. Duty work must consist only of the tidying and cleaning naturally performed by an operator around the operator's own chair at the conclusion of the barber process. It may not include menial work ordinarily performed by a maid or janitor.

(e) Every barber school is required to instruct students in barber science as follows:

<i>Subject</i>	<i>Approximate Hours</i>
Honing and stropping	25
Shaving and various uses of the straight razor	240
Haircutting, hairstyling and hairpieces	535
Shampoo and scalp massages	25
Haircoloring	25
Massaging (facials)	25
Hairwaving or curling (perms), straightening	25
Scalp and skin disease	50
State barber law and rules and regulations	50
Physiology	50
Sterilization and sanitation	50
Hygiene	25
Bacteriology	25
Electricity (ultraviolet, high frequency, infrared, curling irons)	25
Professional ethics and barbershop demeanor	25
Manager-barber instruction, instruments, shop management, orientation and preparation for related examination	50
Total minimum hours required	1,250

(f) A student who has commenced training under the previous curriculum before January 25, 1992, is not affected by subsection (c).

(g) A student may not receive credit for time spent in the barber school until registration or renewal licenses for the schools have been obtained from the Board.

(h) Whenever a student at the time of enrolling is entitled to credits previously earned at an out-of-State or in-State school, the school enrolling the student shall carefully evaluate the credits. A mere statement that the applicant for certification of entrance credits has pursued work elsewhere will not be accepted as sufficient evidence. The statement shall be documentary evidence showing attendance at a given school, and if possible, the number of hours attended and the subjects pursued.

(i) A student may request a transfer of credits for hours or months of study between a barbershop and a barber school or between shops, whether the barbershop or barber school is in-State or out-of State, if the student passes a test which is based on the number of hours attended and the subjects pursued and is devised by the shop or the school to place the student in the appropriate courses.

(j) The Board reserves the right to reject an examination application of a student whose credits have been improperly given or evaluated.

§ 3.103. Fees.

The schedule of fees charged by the Board is as follows:

Licensure of barber, barber shop manager or barber teacher	\$10
Licensure of barber by reciprocity	\$20

Licensure of barber shop	\$55
Licensure of barber school	\$280
Biennial renewal of barber license	\$42
Biennial renewal of barber shop manager license ..	\$62
Biennial renewal of barber teacher license	\$67
Biennial renewal of barber shop license	\$72
Biennial renewal of barber school license	\$112
Change in barber shop—inspection required	\$55
Change in barber shop—no inspection required	\$15
Reinspection after first fail—new or change (shop or school)	\$40
Verify license/permit/registration	\$15
Certification of student status or student training hours	\$30

[Pa.B. Doc. No. 10-2360. Filed for public inspection December 10, 2010, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 119]

Personal Income Tax—Innocent Spouse Relief

The Department of Revenue (Department), under the authority in section 212 of the Taxpayers' Bill of Rights (act) (72 P.S. § 3310-212), regarding innocent spouse relief, adopts § 119.30 (relating to innocent spouse relief).

Purpose of this Final-Form Rulemaking

This final-form rulemaking clarifies the Department's policy on innocent spouse relief for Pennsylvania Personal Income Tax as enacted under section 212 of the act. In addition, the final-form rulemaking provides clear instructions for taxpayers regarding elections filed with the Taxpayers' Rights Advocate seeking relief from tax liability of Pennsylvania Personal Income Tax.

Explanation of Regulatory Requirements

Section 119.30 provides uniformity and guidance to this Commonwealth's taxpayers seeking innocent spouse relief under section 207 of the act (72 P.S. § 3310-207). Several examples are included in this new section.

Subsection (a) contains definitions for "collection activity," "disqualified asset," "electing spouse," "nonelecting spouse," "rebate," "Taxpayers' Rights Advocate" and "understatement."

Subsection (b) provides general information on relief from joint and several liability for understated tax and unpaid tax.

Subsection (c) provides qualifications for relief from liability applicable to joint filers for understatement of tax. In addition, knowledge or reason to know of an understatement and apportionment of relief are explained. This subsection also includes an example.

Subsection (d) details qualifications for separation of liability relief applicable to taxpayers no longer married or taxpayers legally separated or not living together. Individuals eligible to make elections, elections not valid with respect to certain deficiencies and disqualified asset

transfers are explained in this subsection. Several examples are included in this subsection.

Subsection (e) explains the factors the Taxpayers' Rights Advocate will consider in determining granting unpaid tax relief and relief from liability for a deficiency if relief is unavailable under subsections (c) and (d). In addition, this subsection includes several examples.

Subsection (f) explains the election procedure and timing of election for requesting innocent spouse relief.

Subsection (g) explains the Taxpayers' Rights Advocate's procedures for an invalid election, spousal notification, relief determination, notification of relief and appeal rights.

Subsection (h) explains relief for penalties, interest and other charges. An example is also illustrated.

Affected Parties

This Commonwealth's taxpayers and tax practitioners may be affected by the final-form rulemaking.

Comment and Response Summary

Notice of proposed rulemaking was published at 40 Pa.B. 1916 (April 10, 2010). No amendments have been made to the proposed rulemaking.

The Department has prepared a comment and response document that is available to interested parties by contacting Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, PA 17128-1061.

The Department received comments from one organization, the Pennsylvania Coalition Against Domestic Violence, during the public comment period. Representative Samuel Rohrer, Republican Chairperson of the House Finance Committee submitted a letter to the Independent Regulatory Review Commission (IRRC), dated April 19, 2010, regarding the time frame of the regulation and issues with Department policy. Specific recommendations for revisions to the regulation were not provided by the Republican House Finance Committee. No comments were received by the Senate Finance Committee. IRRC submitted no specific recommendations for the proposed rulemaking. IRRC requested that the Department provide a detailed response to the April 19, 2010, letter submitted by Representative Samuel Rohrer to IRRC.

Fiscal Impact

The Department has determined that the final-form rulemaking creates no foreseeable revenue impact on the Commonwealth.

Paperwork

The final-form rulemaking will not create additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The final-form rulemaking will become effective upon final publication in the *Pennsylvania Bulletin*. The regulation is scheduled for review within 5 years of final publication. A sunset date has not been assigned.

Contact Person

The contact person for an explanation of the final-form rulemaking is Mary R. Sprunk, Office of Chief Counsel, Department of Revenue, P. O. Box 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 29, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 1916, to IRRC and the Chairpersons of the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate 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 October 20, 2010, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 21, 2010, and approved the final-form rulemaking.

Findings

The Department finds that:

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

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code Chapter 119, are amended by adding § 119.30 to read as set forth at 40 Pa.B. 1916.

(b) The Secretary of the Department shall submit this order and 40 Pa.B. 1916 to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and 40 Pa.B. 1916 and deposit them with the Legislative Reference Bureau as required by law.

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

C. DANIEL HASSELL,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6487 (November 6, 2010).)

Fiscal Note: Fiscal Note 15-448 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 10-2361. Filed for public inspection December 10, 2010, 9:00 a.m.]

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-2009-2141293]

Interim Guidelines for the Filing of Electric Transmission Line Siting Applications

Public Meeting held
November 4, 2010

Commissioners Present: James H. Cawley, Chairperson;
Tyrone J. Christy, Vice Chairperson; John Coleman;
Wayne E. Gardner; Robert F. Powelson

*Interim Guidelines for the Filing of Electric
Transmission Line Siting Applications;
M-2009-2141293*

Final Order Establishing Interim Guidelines

By the Commission:

By order of the Commission entered February 2, 2010, the Commission issued a Tentative Order establishing proposed Interim Guidelines for the Filing of Electric Transmission Lining Siting Applications. Notice of this Tentative Order was published at 40 Pa.B. 953 (February 13, 2010). The Tentative Order established a 45-day period for filing comments. By this order, the Commission establishes Interim Guidelines governing the siting of electric transmission facilities.

Background

The current regulatory filing requirements utilized by this Commission for the siting of high voltage electric utility transmission lines are governed generally by sections 1501 and 2805 of the Public Utility Code and section 1511 of the Business Corporation Law, 66 Pa.C.S. §§ 1501, 2805; 15 Pa.C.S. § 1511. Detailed filing requirements for transmission siting applications appear in Chapter 57 of the Commission's regulations—specifically §§ 57.71—57.76. 52 Pa. Code §§ 57.71—57.76 (relating to Commission procedures for siting and construction of electric transmission lines). However, the Commission's current regulatory requirements for the siting of electric transmission lines are over 30 years old and, although these regulations have been periodically revised (with the last revision occurring in 1999), the Commission believes that these regulations need to be further updated and revised to accurately reflect recent developments in transmission planning occurring at the federal level, and in general, to ensure that appropriate information accompany each transmission siting application.

There have been many significant developments that require this Commission to undertake a revision of its transmission siting regulations. Congress recently enacted section 216 of the Energy Policy Act of 2005 (EPAct of 2005) which greatly expands the role of the federal government in transmission siting including the creation of federal backstop siting authority that requires state commissions to review and rule upon large transmission siting projects within one year. The EPAct of 2005 also authorizes the U.S. Department of Energy (DOE) to study congestion on a national level and to designate National Interest Electric Transmission Corridors to promote transmission development. The EPAct of 2005 also

expands the role of the Federal Energy Regulatory Commission (FERC) in permitting and siting of transmission facilities. Increasingly, FERC is encouraging, through pronouncements such as Order 890, regional transmission planning which has spurred greater regional planning initiatives at the RTO/ISO level. Most recently, FERC has issued a Notice of Proposed Rulemaking at RM10-23-000 that will examine how costs for regional transmission projects should be allocated within and between planning regions.

Additionally, a number of new multi-state backbone transmission projects, such as the TrAILCo and Susquehanna-Roseland projects, have been recently approved by the Commission and other transmission projects have been filed in neighboring states that have regional reliability and rate implications for the ratepayers of Pennsylvania.

As stated in the Tentative Order issuing proposed Interim Guidelines at p. 2, the Commission indicated its intent to initiate a general rulemaking proceeding under separate order inviting comments from interested parties to revise the Chapter 57 regulations for the siting of large transmission facilities. This rulemaking proceeding will be complex and time consuming covering a broad array of topics and potentially involving many stakeholders. The Commission anticipates that the entire rulemaking process may take from 12 to 18 months. The Commission wishes, at the outset, to underscore its interest and commitment in developing a regulatory approval process that is timely, efficient and fair to all parties including those private and public parties whose properties are affected by the siting of these transmission facilities.

On February 2, 2010, the Commission issued its Tentative Order proposing Interim Guidelines which requested submission of additional information to supplement the existing filing requirements. These proposed Interim Guidelines were issued and established a 45-day filing period for the filing of comments.

Sixteen parties filed comments. The following parties filed comments on behalf of the electric utility sector: The Energy Association of PA (EAPA), PPL Electric Utilities (PPL), PECO Energy Company (PECO), Duquesne Light Company (Duquesne), FirstEnergy (on behalf of Pennsylvania Electric Company, Metropolitan Edison Company and Pennsylvania Power) (FirstEnergy) and Allegheny Power d/b/a West Penn Power (Allegheny). Governmental parties filing comments included the Commission Office of Trial Staff (OTS), Office of Consumer Advocate (OCA), PA Game Commission (PGC), PA Dept. of Conservation and Natural Resources (DCNR) and the Montgomery County Planning Commission (MCPC). A number of environmental and resource preservation non-governmental organizations filed comments including the PA Chapter of The Nature Conservancy (TNC), the Audubon Society (Audubon) and the Brandywine Conservancy (Brandywine). We have reviewed and addressed these comments below.

Designation of Interim Guidelines

For purposes of discussing the comments received on the proposed Interim Guidelines, the numbering references contained in the Tentative Order are utilized. At the conclusion of each discussion, each Interim Guideline is cross-referenced to the corresponding section reference as contained in Chapter 69 of the Pa. Code where these Interim Guidelines will be published.

The Need for Interim Guidelines

There was a divergence of opinion on the need to establish Interim Guidelines during the pendency of the formal rulemaking. A number of electric utility sector comments including EAPA and Duquesne questioned the need for Interim Guidelines at all, terming them unnecessary, duplicative and potentially confusing to electric utilities filing transmission applications. The EAPA is concerned that the Interim Guidelines may discourage investment in transmission infrastructure and requests modifications to the Interim Guidelines or, alternatively, scrapping the concept of Interim Guidelines entirely. EAPA proposes the Commission continue to process transmission proceedings on a case by case basis. Duquesne echoes these concerns stating there is no reason to either subvert the prescribed rulemaking procedure dictated by law or to modify a legally prescribed methodology to amend rules, e.g. the formal rulemaking process. PECO, FirstEnergy and Allegheny have similar concerns but nevertheless suggest constructive modifications to the proposed Interim Guidelines. PECO filed detailed comments seeking to improve language clarity and specificity. FirstEnergy advises that the Commission should only enact those Interim Guidelines that are clearly needed to provide the Commission with information to make an informed decision. PPL supports the concept of Interim Guidelines, stating that most of the information requested is typically gathered during the transmission application process and is either submitted as part of the transmission application or is available through discovery. PPL additionally offers a number of suggested changes which improve these guidelines as ultimately adopted.

A number of other parties filed detailed comments generally supportive of the Interim Guidelines including OTS, OCA, PGC, DCNR, Brandywine, MCPC, Audubon, and TNC. All of these parties support adoption of the proposed Interim Guidelines and make additional suggestions to enhance their effectiveness. The Commission has considered the suggestions offered by the non-utility parties and incorporated them where possible. However, a number of suggestions proposed by non-utility parties would significantly expand the scope of the Interim Guidelines beyond the original intent and would implement changes not fully subject to review and comment by all parties. In those circumstances, the Commission encourages the parties proposing these additional changes to submit these suggestions as part of the Proposed Rulemaking.

The Commission reiterates the need for a limited set of Interim Guidelines as being necessary and proper to the efficient functioning of the agency in the processing of transmission siting cases. The Commission has routinely utilized Interim Guidelines in other proceedings. See *Interim Guidelines for Abbreviated Dispute Resolution Process*, Dkt. No. M-00021685 (Order entered August 31, 2005); *Interim Customer Information Disclosure Requirements for Natural Gas Distribution Companies and Natural Gas Suppliers*, Dkt. No. M-00991249F0005 (Order entered August 27, 1999); *Final Interim Guidelines Regarding Notification by an Electric Generation Supplier of Operational Changes Affecting Customer Service and Contracts*, Dkt. No. M-00960890F0013 (Order entered August 14, 1998). Most recently the Commission has issued *Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers*, Dkt. No. M-2010-2185981 (Order entered July 15, 2010). In adopting the following Interim Guidelines, the Commission has carefully considered the comments of the electric utilities and non-utility parties and has modified the Interim Guidelines in a

manner which does not impose additional burdens on an already document-intensive process. In many instances, the Interim Guidelines have been modified to reflect valid utility concerns. Also as noted by a number of electric utilities, where a perceived conflict exists between a particular Interim Guideline and an existing regulation, the existing Chapter 57 regulation will govern.

The Commission has the authority to establish Interim Guidelines pursuant to 52 Pa. Code § 57.72(c)(15) to request additional information that it may require as part of a transmission application filing process. Additionally, while these Interim Guidelines are not mandatory, a failure to provide this information with the initial application may result in that information being requested through the discovery process. More importantly, it is essential and in the public interest for the Commission to obtain information necessary to make a fair and informed judgment regarding the merits of proposed transmission projects in Pennsylvania.

In the Commission's judgment, there are a number of reasons why Interim Guidelines are necessary and appropriate. First, as a number of parties noted, the current transmission siting regulations have been in existence for over 30 years and were designed in an era when transmission lines were largely intrastate in character and regional reliability issues were not a concern. The Commission believes that certain modifications to the filing requirements may be implemented which do not place excessive burdens on transmission applicants pending the issuance of final regulations. Second, the Commission has decided two major transmission siting proceedings in the past three years and more such proceedings are expected in the future. In recent transmission proceedings, issues arose relating to public outreach and education, landowner relations, coordination of federal and state permitting and eminent domain practices. Those issues are anticipated to arise in future transmission siting proceedings. OCA comments that they have observed first-hand "the confusion and difficulties experienced by members of the public affected by transmission line siting." (OCA Comments, p.2). The Interim Guidelines are designed to address those circumstances. Finally, the Commission has limited resources for managing complex transmission siting cases while operating under the federal requirement that major transmission siting cases be processed within one year. The Interim Guidelines are designed to provide the necessary additional information to enable the Commission to process transmission siting applications on a timely basis and meet the one year requirement. The Scope of the Interim Guidelines is contained in Annex A at § 69.3101.

Public Notice Filing Requirements

Section 2(i)

The purpose for implementing Interim Guidelines addressing public notice was two-fold: (1) to provide for an increased level of knowledge on the part of the public generally about the siting of electric transmission lines and (2) to ensure uniform, fair treatment of impacted landowners located along transmission line rights of way (ROW). Recent transmission line siting proceedings have demonstrated to this Commission that improvements in the filing requirements and notification procedures are necessary.

Section 2(i) of the proposed Interim Guidelines provides that applications for electric transmission siting authority include a Code of Conduct or Internal Practices governing the manner in which public utility employees and/or their

agents interact with affected property owners. Standardized utility practices governing interactions with landowners ensure fair, open and equitable treatment of landowners during the transmission siting process and can enhance future communications between landowners and the public utility.

Electric utility comments varied on the need for this requirement. Duquesne Light questioned the need for such a requirement indicating that the existing notice requirements are sufficient. PECO suggests that Codes of Conduct be company-specific reflecting the particular procedures of the utility. FirstEnergy considers the requirement to be vague and suggests that the Commission provide specific guidelines. PPL questions the need to provide the Code of Conduct with the notices of applications and/or letters of notification that go to individual landowners. PPL is also concerned about the scope of this requirement. In PPL's view, the requirement could be considered to apply to all landowners with a view of the transmission line and could require the public utility to craft a set of rules applicable to many different situations in which the utility interacts with the public relative to the transmission line project. Finally, no non-utility party opposed the guideline and OTS and OCA endorsed the guideline. OCA noted that the adequacy of notice to landowners and the behavior of utility representatives and land agents were raised at various junctures of specific transmission line proceedings thus justifying implementation of additional requirements.

Resolution

The Commission does not consider it either unreasonable or overly burdensome to require a public utility to make available a Code of Conduct/Internal Practices as part of the initial application which will enable all parties to better understand and assess the quality of public utility/landowner interaction during the siting process. Moreover, the Commission believes that this document should be made available to all affected landowners. Landowners situated along a proposed transmission corridor should be apprised of what practices the utility will employ as part of its ownership of or easement rights to the property. Reflecting PPL's concern over the scope of this requirement, we adopt PPL's clarification that the service of the Code of Conduct only be made to landowners physically located along the transmission corridor whose property may be subject to purchase or easement or simply border the transmission route. This requirement would not apply to all landowners who may have a "view" of the corridor. The document should also be available on the utility's website. Additionally, the parties to the proceeding and the Commission should have a means of gauging what standards and procedures the utility utilizes in either direct interactions with landowners or interactions between third party contractors and landowners. Additionally, such information will aid the Administrative Law Judge (ALJ) and Commission in addressing landowner complaints that arise during the public input process.

With regard to specific comments, the Commission encourages jurisdictional electric utilities to develop (if not already available) or update existing Codes of Conduct/Internal Practices governing their relationships with affected landowners. These documents should encompass a description of utility practices with regard to properties potentially subject to condemnation or purchase as well as utility practices in dealing with landowners adjacent to the route of the transmission line. The Commission is reluctant, as FirstEnergy suggests, to

prescribe the contents of such documents because, as noted by PECO, such information should be company-specific reflecting the unique practices of each public utility. This Interim Guideline is adopted at Annex A at § 69.3102(a)(1).

Sections 2(ii) and (iii)

Section 2(ii) of the Interim Guidelines requests the application filing include copies of information to impacted landowners by the public utility, including bill inserts, newspaper and website notices and radio and TV notices advising landowners to contact the Commission or OCA in the event of improper land agent or utility employee practices. The Interim Guidelines also request submission of notices sent pursuant to 52 Pa. Code § 57.91 which are the notices provided in the event of the electric utility seeking to exercise eminent domain authority. An additional provision of the Interim Guidelines requests provision of notice to the Commission Office of Communications regarding informational presentations to community groups by the public utility so that Commission representatives, OCA and other governmental entities can attend meetings or obtain copies of information being disseminated at the presentations. These additional filing requests were prompted by concerns raised in recent transmission siting proceedings about the adequacy of notice to impacted landowners on the land use impacts and eminent domain issues associated with the proposed facilities.

Electric utility comments largely questioned the need for these additional requirements pending completion of the proposed rulemaking. Duquesne does not believe any additional regulation of public notice requirements is warranted. The EAPA and PPL raised concerns about the scope of the term "affected landowners." These parties were concerned that this term could be construed to apply to any communication between the utility and landowners, a requirement that could be burdensome and impractical. PPL suggests that only information prepared for general notice to landowners be provided. PPL also is concerned that notices of public meetings occurring prior to the filing of the application would reflect a fundamental change in Commission procedures that are not appropriate for inclusion in Interim Guidelines. FirstEnergy raised concerns over the cost of providing additional notices. PECO claims that its standard practices in handling landowner notification issues renders additional notification requirements unnecessary. PECO indicates that it already provides detailed information in its applications about public outreach. Some electric utility comments indicated that these requirements would be feasible subject to language modifications and reasonable limitations on scope of notice. OCA commented that provision of public information such as bill inserts and newspaper notices to the Commission, during the course of the proceeding, would benefit the process through greater transparency, allow for monitoring of public statements by the statutory parties and lead to enhanced public confidence. No commenter objected to section 2(iii) of the Interim Guidelines requesting production of copies of all notices sent pursuant to 52 Pa. Code § 57.91.

Resolution

In establishing these Interim Guidelines, the Commission must balance concerns over proper notice to impacted landowners along the transmission route with minimizing additional costs and burdens to the public utility. The Commission agrees with EAPA and PPL that the term "affected landowner" be limited to communications by electric utilities to owners of land that will be

purchased for the transmission project or be subject to ROW or easement requirements. The requirement contained in section 2(ii) of the Interim Guidelines is only requesting the filing, with the application, of any publicly disseminated notices to landowners located along the route of the transmission line of the need to contact either the Commission or OCA in the event of any improper land agent practices. Interim Guidelines 2(ii) and (iii) as adopted are contained in Annex A at § 69.3102(a)(2) and (3).

Service of Copies of the Code of Conduct

The Commission strongly encourages utility applicants to take special efforts to inform landowners of the practices employed by the utility in its relationship with the landowner both during the negotiation process and after the property has been purchased or the easement rights obtained. Landowners whose properties merely border the transmission corridor should also have knowledge of the utility's standard practices. For this reason, we are requiring in § 69.3102(b) of the Interim Guidelines that each utility applicant make available and provide a written copy of its Code of Conduct/Internal Practices on each landowner along the proposed route. To be clear, the class of landowners potentially eligible for receipt of this document would be landowners whose properties are either subject to purchase or easement as well as properties that border the proposed transmission route. The utility should also make the Code of Conduct available on the utility website. This Interim Guideline is adopted at Annex A at § 69.3102(b).

Informational Presentations

The Interim Guidelines request that transmission siting applicants provide prior notice to the Commission's Office of Communications of informational presentations to community groups by the public utility regarding the proposed transmission line so that the Commission or other governmental parties can attend or at least obtain information regarding the type of information that is being distributed to the public by the electric utility. Virtually all the electric utility comments raised practical objections to the proposal which can be categorized as follows: (i) public utility informational outreach is very company-specific to the service area; (ii) informational public outreach and education about a proposed transmission project begins long before the formal application is made; (iii) this requirement may be burdensome as any type of communication between the utility and an individual landowner could come within the guideline; and (iv) the presence of Commission or other governmental personnel may have a "chilling effect" on the informational exchange and may render the meeting a public input hearing. On the other hand, the OCA supported provision of such information as a means of increasing transparency and public confidence in the administrative process.

Resolution

The Commission agrees with PECO that a prudent public utility transmission applicant begins the public outreach and educational process before the formal application is filed with the agency. Also, the type and quality of the communication process will vary by public utility service area. Additionally, public presentations on a subject as controversial as a transmission line have the potential to become contentious. Allowing potential parties to the case to attend before the formal filing of the application would be inconsistent with the Commission's Rules of Practice and Procedure. PPL notes that pre-filing

attendance of Commission or other governmental parties would reflect a fundamental change in the Commission's review and involvement in transmission siting cases. The Commission already provides for ample public input sessions after the case is filed and does not wish to duplicate that process.

However, the Commission does have a concern regarding the amount and quality of information provided by the utility applicants to the public generally about a proposed transmission project. As such, the provision of advance notice of informational sessions to the public, either to the general community or interest groups, after the filing of the formal application, is not inconsistent with the Commission's duties generally in reviewing and approving transmission siting applications and insuring that the entire public outreach/education process is transparent.

In recognition of the concerns raised by electric utility comments, the Commission narrows the scope of this particular Interim Guideline to require the provision of notice to the Commission's Office of Communications of publicly advertised meetings with large community or other interest groups by the public utility following the filing of the formal application for siting and construction of the transmission line. The Commission is not going to define the particular size of the group to which this Interim Guideline applies but will leave that to the discretion and judgment of each utility. Additionally, the public utility should also be prepared to produce, if requested, copies of information disseminated at these informational presentations. This Interim Guideline is adopted in Annex A at § 69.3102(c).

Eminent Domain Filing Requirements

A public utility's eminent domain power derives from section 1511(c) of the Business Corporation Law 15 Pa.C.S. § 1511(c). The Commission currently has authority for eminent domain powers under 66 Pa.C.S. § 1104 and 52 Pa. Code § 57.91. The proposed Interim Guidelines are designed to assist the Commission in evaluating applications for eminent domain authority pending a general review of the scope of the Commission's condemnation powers during the upcoming rulemaking process.

Section 3(i)

Section 3(i) requests the filing of applications for eminent domain authority separate from but simultaneously with the associated transmission siting application. The Interim Guideline also recommends the filing of written testimony in support of the eminent domain application.

Electric utility comments suggested that certain modifications be made to the guideline. A number of public utility comments (EAPA, PPL, PECO, Duquesne, FirstEnergy) raised concerns that the simultaneous filing requirement may disrupt ongoing negotiations with landowners and unnecessarily complicate land acquisition. Duquesne notes that 52 Pa. Code § 57.75(i) permits but does not require the filing of eminent domain applications at the same time as the siting application. Allegheny notes that landowners often do not begin to seriously negotiate until after the siting application is filed. Negotiations or even preliminary evaluations may be ongoing with the need to actually file for eminent domain authority arising after the filing of the transmission siting application. Eminent domain proceedings may not even come into play until the end of the transmission siting process after the line has been approved. PECO notes that synchronization of the filings of transmission siting applications and eminent domain applications may not

always be feasible or necessary. Synchronized filings may also change the tenor of negotiations that were largely harmonious and now may become contentious. PPL suggests that the simultaneous filing requirement be clarified to require that the public utility file for all known eminent domain authority when it files its transmission siting applications. Non-utility parties were uniformly in favor of this Interim Guideline. The OCA requests that the Interim Guidelines be modified to require filing of separate petitions for each property with precise locations and a prominent notice to landowners to file responses which would improve the process and provide potentially affected landowners enhanced information compared to what has been required in the past.

Resolution

The Commission recognizes the concerns raised by electric utilities about both the timing constraints associated with simultaneous filings as well as the preference of avoiding condemnation proceedings entirely in favor of negotiated settlements. Condemnation proceedings are costly and time-consuming legal proceedings that should be considered as a last resort after all efforts at negotiation fail. The Commission is not seeking to prematurely accelerate the condemnation process by the utility nor is it precluding utilities from filing for condemnation authority in advance of filing for transmission siting authority. Utilities should maintain the maximum flexibility in their real estate acquisition practices. At the same time, the Commission is concerned, for case scheduling purposes, that it be able to process the eminent domain applications in a parallel timeline with the transmission siting proceeding. The Commission already establishes fairly detailed filing requirements for eminent domain applications at 52 Pa. Code § 57.75(i) and the proposed Interim Guidelines are designed to supplement those requirements.

The Commission will modify section 3(i) of the Interim Guidelines to request the filing of all known eminent domain applications to the extent the filing utility needs such condemnation authority at the time of filing of the siting application. We will request that utilities file any additional required eminent domain applications, as soon as reasonably known and practicable during the course of the siting proceeding. Additionally, all eminent domain applications should be supported by written testimony. The Commission believes that supporting testimony to the eminent domain application should address the reasons for the filing and the precise location of the property.

PPL additionally suggests that the Commission establish a date, perhaps 45 days, by which individual property owners must file a protest or petition to intervene in a public utility's application for eminent domain authority. OCA makes a similar suggestion for filing of separate petitions for each property with more prominent notices of the right of landowners to respond. The Commission can require publication of eminent domain approval applications with a 60 day protest period under section 5.53 of the Rules of Practice and Procedure. The Commission would be interested, as part of the upcoming rulemaking, in learning whether additional changes should be made to the existing provision to provide for more specific notice and response requirements. This Interim Guideline is adopted in Annex A at § 69.3103(1).

Section 3(ii)

Section 3(ii) requires provision of notice of eminent domain proceedings to affected landowners prominent enough to put the landowner on notice to file a response

or objection. PECO notes that there is an existing detailed notice in the regulations at 52 Pa. Code § 57.91 that must be served on affected landowners by registered or certified mail when an application for eminent domain is filed. PPL suggests that the Commission require provision of a Notice to Plead and to specify a defined number of days for answers and/or interventions. OCA notes that making a notice of initiation of eminent domain proceedings to affected landowners can be problematic referencing the TrAILCo proceeding where the ALJs noted that a single page notice was buried under "six pounds of paper." Application of TrAILCo, Dkt. No. A-110172 (R.D. at 205-206).

Resolution

This Interim Guideline was developed in response to issues in recent transmission siting cases about the adequacy of notice provided to landowners whose property was subject to condemnation proceedings. The Commission notes that the existing regulation at 52 Pa. Code § 57.91 currently provides for service by registered or certified mail of a detailed notice to property owners. However, § 57.91 does not require the notice to include a list of pleadings which can be filed in response to such an application. While the format prescribed in the regulation may be sufficient, the nature and timing of the notice in conjunction with other materials received by the landowners may need to be modified. Modification of this regulation may be appropriate including adding a Notice to Plead and a defined period to file a responsive pleading. However, the extent of these proposed changes may be inappropriate for an Interim Guideline. The Commission will delete this Interim Guideline but will revisit the current 52 Pa. Code § 57.91 as part of the proposed rulemaking. Copies of notices provided under this regulation should continue to be filed with the siting application pursuant to that provision. Utilities should continue to comply with 52 Pa. Code § 57.91 but make best efforts to insure proper notice to affected landowners of the pendency of the eminent domain action.

Section 3(iii)

Section 3(iii) requires the public utility applicant present with specificity the reason for exercise of condemnation power for each location, the precise location of the affected property, details of the status of negotiations with landowners and supporting maps or legal descriptions of the property to be condemned. The Commission believes this additional information is necessary to enable the evaluation of the propriety of exercise of condemnation power.

A number of public utilities, while raising concerns about the requirement, suggested several modifications to this Interim Guideline. EAPA and Allegheny are concerned about the requirement of providing "metes and bounds" legal descriptions as opposed to the more practical language in the Interim Guidelines requesting "supporting maps or legal descriptions of the easement/right-of-way . . . to the extent feasible." Both comments also express concern that the requirement is inconsistent with existing siting requirements at 52 Pa. Code § 57.72(c)(3) and § 57.76(b). Section 57.72(c)(3) requires the filing of a general description of the property included within the transmission corridor. Section 57.76(b) states a grant of transmission siting authority is deemed to encompass an area of 500 feet along either side of the centerline of the transmission corridor. Allegheny notes that a specific property description may not be available at the time the transmission siting application is filed. Finally, PECO highlights a potential inconsistency between the require-

ment in section 3(iii) to file information regarding the precise location of the impacted property and the requirement under the Eminent Domain Code at 26 Pa.C.S. § 302(b)(5) which requires a public utility to file with the Court of Common Pleas specific narrative descriptions or plans of the property condemned. In support of the Interim Guideline, OCA comments that section 3(iii) would provide a much-needed greater specificity concerning eminent domain applications and would greatly benefit those members of the public whose property lies within the property to be acquired.

Resolution

The Commission's intent in proposing this guideline was to address issues that arose in recent transmission siting proceedings regarding the type and adequacy of notice to impacted landowners who own property that will be subject to condemnation proceedings. Although the Commission appreciates the concerns raised in comments of the electric utilities about potential conflicts with existing regulations, we must balance that concern with the need to provide fairness and transparency to affected landowners who may not be familiar with the potential interference with utilization of their property and the legal implications on their property from the siting of transmission facilities. Moreover, proposed section 3(iii) of the Interim Guidelines is not intended to conflict with but to supplement the information required in the existing regulations at 52 Pa. Code § 57.75(i). Further, in response to a concern raised by EAPA, the language of the Interim Guideline takes precedence over the language of the Tentative Order recognizing that "defined widths" and "specific metes and bounds" are not necessarily available at the time the siting application is filed.

In addition, the additional detail requested as part of the application in section 3(iii), including the reason for the condemnation and the precise location of the property, is only requested for that property that is known to be subject to condemnation at the time the siting application is filed. This additional information can be easily addressed in the eminent domain application by direct testimony with supporting exhibits. Moreover, the number of properties that need to be described for condemnation purposes will be a subset of the properties identified for the entire transmission corridor so the additional burdens associated with this requirement should not be significant. If additional properties are identified as potential candidates for condemnation later in the transmission siting process, the public utility applicant should include the same information as part of a later filed eminent domain application. The language of the Interim Guideline will also be modified to incorporate PECO's concern that the Guideline not conflict with 26 Pa.C.S. § 302(b)(5).¹

Finally, no concerns were raised regarding the requirement that there be, as part of the section 3(iii) submission, a brief description of the reason for the condemnation which can be addressed in testimony. However, there was a concern raised by some electric utilities regarding provision of information with the application on the status of negotiations with landowners. This informational request is not designed to inquire into the confidential details of ongoing negotiations but merely to provide, for the good of the record and for case management

purposes, a summary status of those properties where negotiations may be ongoing so that the presiding officer and the parties can gauge the potential likelihood of additional condemnation actions during the course of the siting proceeding. The language of this guideline has been revised to address these concerns. For purposes of clarity, these Interim Guidelines will be adopted and designated as § 69.3103(2) and (3) in Annex A.

Section 3(iv)

Section 3(iv) requests a public utility applicant file a Code of Conduct or Internal Operating Procedures applicable to employees or agents responsible for interacting with impacted landowners. This Interim Guideline is largely identical to proposed Interim Guideline Section 2(i) under the Public Notice Interim Guideline. Comments filed in response to that proposed Interim Guideline were addressed previously. The Code of Conduct to be filed in response to Interim Guideline § 69.3102(a)(1) is designed to be broad enough to encompass communications with landowners affected by condemnation proceedings. To minimize the need for duplicative filings, this Interim Guideline will be deleted.

Exemption from Municipal Zoning Standards

The Commission has proposed a number of Interim Guidelines which expand the quantity of information which should be submitted in support of applications for exemption from municipal zoning requirements. A number of electric utilities, while questioning the need for these guidelines generally, have offered suggested modifications to these Interim Guidelines. Other comments from governmental and other parties were generally supportive of these guidelines.

Section 4(i)

Section 4(i) requests production of land use plans, zoning ordinances and other documentation relevant to the "facilities" impacted by the exemption request. This Interim Guideline was proposed to require production of additional information that the ALJ and the Commission may find useful in evaluating requests for exemption from zoning requirements.

A number of electric utility parties (EAPA, PPL, Allegheny, PECO) note that the use of the term "facilities" in the Interim Guideline may be too broad. Section 619 of the Municipal Planning Code (MPC), 53 Pa. Code § 10619, specifically limits the scope of Commission jurisdiction for the grant of exemptions from local zoning requirements to "buildings." The Pennsylvania appellate courts have long held that the Commission has exclusive jurisdiction over the siting and construction of transmission lines and municipalities have no residual local jurisdiction over such utility construction activities. See *Duquesne Light Company v. Upper St. Clair Township*, 103 A. 2d 287 (Pa. Supreme 1954). PPL and other electric utilities recommend that the word "facilities" be replaced with the word "building" to more properly conform to section 619 of the MPC and appellate case-law.

Resolution

The proposed modification by several electric utilities is appropriate and will be adopted. The term "facility" in section 4(i) will be changed to "building." The term "facility" in section 4(iii) will also be replaced by the term "building" consistent with the comments received.

Section 4(i) also requests production of land use plans, zoning ordinances and other documentation relevant to the "facilities" impacted by the exemption request. As noted previously, the term "facilities" will be changed to

¹ The relevant language of section 302(b)(5) of the Eminent Domain Code states that the eminent domain filing to the Common Pleas Court must contain: "A description of the property condemned, sufficient for identification, specifying the municipal corporation and the county or counties where the property is located, or reference to the place of recording in the office of the recorder of deeds of plans showing the property condemned or a statement that plans showing the property condemned are on the same day being lodged for record or filed in the office or recorder of deeds."

“building.” This change narrows considerably the scope of the filings associated with section 4(i). The Commission believes that the requested information may be necessary and useful to the parties and the ALJ in evaluating the request for zoning exemption and should be available. However, PPL notes that local ordinances and land use plans as they relate to “buildings” may be voluminous and burdensome to provide in hard-copy form. PPL suggests that such information be made available electronically. The Commission agrees with this suggestion and will modify Interim Guideline 4(i) to allow the option to supply this information in either hard-copy or electronic format. This Interim Guideline is adopted in Annex A at § 69.3104(1).

Section 4(ii)

Section 4(ii) requests production of a detailed strategy for compliance with the comprehensive plans and ordinances that demonstrates the applicant’s best efforts to comply with the plan. As previously modified, the Interim Guideline, if adopted, would only apply to exemptions sought for “buildings” as required under section 619 of the MPC. It should also be noted that the Commission is required, under its Policy Statement at 52 Pa. Code § 69.1101(2), (3) to “consider the impact of local comprehensive plans and zoning ordinances” in siting both electric transmission lines as well as buildings under MPC § 619.

Several electric utilities filed comments expressing concern over the Commission possibly exceeding the scope of its jurisdiction through this Interim Guideline in requiring the production of strategies for compliance with comprehensive plans and ordinances. Allegheny comments that this requirement “oversteps the long-standing rule that utilities are not subject to local regulation.” (Allegheny comments, p. 6). PECO is concerned that imposition of this Interim Guideline could be the first step in elevating the consideration given to local zoning ordinances and comprehensive plans to a level that would subject PECO to a miscellaneous collection of local regulations. Other electric utilities voiced similar concerns. OCA supports the guidelines asserting that more specific information would be required which would enhance the information available to impacted municipalities, constitute more effective notice and allow for more timely evaluation of proposed projects by municipalities. The MCPC supports this Interim Guideline and further requests provision of county and regional comprehensive plans.

Resolution

The concerns raised by PECO and Allegheny are entirely valid given the Interim Guideline’s reference to “facilities.” The current Interim Guideline could potentially be interpreted as inviting the Commission to consider the impact of local ordinances on transmission siting facilities generally in contravention to well-settled court precedent. Moreover, the current version of the guideline may, as noted by PECO, be a change that is too significant to implement outside of the rulemaking process.

The Commission has limited the scope of the Interim Guideline to “buildings” consistent with MPC § 619. With this limitation, there is no need for the public utility to demonstrate compliance with plans or ordinances under a provision that already entitles it to an exemption. Moreover, the types of “buildings” for which exemptions are sought do not typically involve the need for “detailed compliance” with land use plans due to the limited nature

of the “footprint” of the structure. As such, the Commission will delete from the Interim Guidelines § 4(ii). This issue raises considerations regarding the proper scope of the Policy Statement at 52 Pa. Code § 69.1011. The comments raised by PECO and Allegheny further suggest that a more thorough examination be given to the meaning of Policy Statement 52 Pa. Code § 69.1101 in the context of transmission siting applications. In the formal rulemaking proceeding that follows, interested parties should be prepared to present their positions on this issue in greater detail.

Section 4(iii)

Section 4(iii) requests production of metes and bounds or maps of facility sites. As noted previously, the term “facility” will be changed to “building.” This modification considerably narrows the scope of the request and the associated burden voiced by some public utilities regarding the burden of providing metes and bounds descriptions. Some utility comments suggested this guideline conflicted with 57 Pa. Code § 57.72(c)(3). The Commission does not view this regulation, which relates to the route of the transmission line generally, as precluding submission of metes and bounds descriptions of the building site or alternatively a site map of the proposed building whichever is available. This information should be readily available. Consequently, this Interim Guideline will be implemented as proposed in Annex A as § 69.3104(2).

Section 4(iv)

Section 4(iv) of the Interim Guidelines requests production of a procedure for providing notice to affected municipalities of the request for an exemption. The Commission has a valid concern in ensuring that municipalities that are impacted by a request for a municipal zoning exemption for a building associated with a transmission line receive adequate notice. Electric utilities did not generally object to this requirement. PPL notes that it routinely serves its requests for exemption on impacted municipalities. PECO asserts that it has a very well-developed outreach procedure for informing impacted municipalities about proposed transmission lines generally including associated structures. Non-utility parties were generally supportive of this guideline.

Resolution

The Commission proposed this Interim Guideline to ensure proper communication between the transmission siting applicant and the municipality affected by the location of the proposed structure. The prior modification of the term “facility” to “building” reduces the scope of the guideline to only those municipalities where structures will be located. The details of compliance with this Interim Guideline can be incorporated into either the petition for exemption or supporting testimony. The Commission will adopt this Interim Guideline and designate this provision as § 69.3104(3) at Annex A.

Route Evaluation and Siting

Route evaluation and siting is the most contentious issue in transmission siting cases. The Commission has drafted Interim Guidelines addressing route evaluation and siting to reflect the increased concerns expressed by various parties in recent transmission siting applications about the placement of transmission lines through areas that are sensitive from an environmental, agricultural, historical or cultural perspective. These Interim Guidelines are designed to supplement the types of information required under 52 Pa. Code § 57.72(c)(3) and (10) and are not intended to supersede or conflict with those established regulations. As with the other Interim Guidelines,

the Commission expects public utility transmission applicants to make best efforts to comply with these informational requests but recognizes these Interim Guidelines do not have the force and effect of regulations.

Section 5(i)

Section 5(i) recommends that utilities should utilize a combination of transmission route evaluation procedures including high-level GIS data, traditional mapping and analysis of site-specific constraints. In response, some electric utility comments (EAPA, Duquesne) questioned the need for any interim guidelines related to route evaluation and siting. FirstEnergy complains that this requirement is overly prescriptive and increases burdens to applicants. FirstEnergy also states that some of the language in section 5(i) is too vague. PPL does not object to this requirement. No non-utility parties objected to this provision. OCA supports utilization of mapping data including GIS and other sources. MCPC supports the use of GIS data, traditional mapping and analysis of site-specific constraints. MCPC suggests that applicants map features that are identified as having environmental or other sensitive land impacts. MCPC also proposes that maps show property lines beneath and adjacent to proposed right of ways (ROWs) and municipal/county ROWs which may serve as utility ROW. TNC and Audubon support the use of GIS data on a prospective basis.

Resolution

It is not the Commission's intent to impose unreasonable burdens on public utilities in the preparation of transmission siting applications. However, the Commission, the presiding ALJs and the parties have a right to obtain the detailed information required to fully evaluate transmission siting requests including the reasonableness of the site chosen for the transmission line. Also, there is a need to insure that uniform, current technologies are utilized by electric utility transmission siting applicants. Geographic Information System (GIS) mapping technologies, for example, are widely employed by a number of industries including utilities. The two recent major siting applications (TrAILCo, Susquehanna-Roseland) made extensive use of GIS technology and traditional mapping techniques in their siting presentations. The Commission does not consider that this requirement will unduly burden the application process since prudent utility practices appear to rely on a variety of mapping procedures. Additionally, other mapping procedures should also be utilized such as aerial and U. S. Geological Survey maps to the extent applicable. The Commission believes this Interim Guideline will enhance the agency's ability to process siting applications, evaluate the reasonableness of the site selection and will provide a measure of standardization of filings among the jurisdictional applicants. Section 5(i) is reasonable and will be adopted subject to PPL's suggested modification. That modification clarifies Interim Guideline 5(i) to refer to "physical" site specific constraints raised by affected landowners and not encompass other "constraints" that simply reflect landowner opposition to transmission lines generally. This Interim guideline is adopted in Annex A at § 69.3105(1).

Section 5(ii)

Section 5(ii) is designed to provide additional information to the Commission and parties to the extent legal disputes over property acquisition and or easements may impact the transmission siting process. This requirement is consistent with the Commission's existing limited authority to review and rule upon eminent domain applications involving the siting of transmission facilities.

There is currently a regulation at 52 Pa. Code § 57.72(c)(14) requesting similar information.

Electric utility comments generally oppose this Interim Guideline. EAPA is concerned that the requirement is overly vague, broad and the party to whom the requirement is directed is not clearly stated. EAPA complains this information is ancillary to the Commission's jurisdiction over eminent domain issues. Allegheny contends that the requirement is establishing a burden of proof to show "with a reasonable degree of certainty" the legal status of claimed ROW that constitutes a "vast extension of the current informational practice." (Allegheny comments, p. 7). Allegheny recommends revising the provision to state that utilities should provide a general statement of the status of property siting acquisitions (including both fee simple and ROW transactions) in their transmission siting applications. No non-utility parties object to this provision.

Resolution

The information requested in section 5(ii) is only asking for a summary description of the legal status of easements/ROW matters to the extent known at the time of the filing of the transmission line application. This section has been revised to make this clear. The Commission is requesting that a status report of property acquisitions (whether fee simple or easement) be provided with the initial application in summary form, with updates as needed during the course of the case as an aid to the ALJ and parties in the management of information associated these often contentious issues. No sensitive, confidential information regarding details of negotiations with parties is being sought. This information request is not designed to be vague or overbroad. It can be supplied in a simple matrix format. Individual utilities can make the necessary judgments as to the format in which they provide this information. Section 5(ii) will be adopted with the modification suggested by Allegheny that the proposed Interim Guideline be revised to request that the utility summarize the status of property acquisitions as part of the application. This Interim Guideline is adopted at Annex A at § 69.3105(2).

Section 5(iii)

Section 5(iii) requests provision of all alternative routes considered together with a discussion of the relative merits of each route as part of the testimonial support that accompanies the transmission siting application. As stated, the Interim Guideline requests description of alternative routes and discussion of the relative merits of each route according to a set of defined factors and the comparative construction cost for each alternative should be provided. Descriptions of proximity to residential and non-residential structures should also be provided.

As with other proposed provisions, this Interim Guideline invited a variety of comments from electric utilities. The general theme of the electric utility comments was that existing regulation 52 Pa. Code § 57.72(c)(10) governing provision of information on alternative routes is adequate and need not be altered. FirstEnergy views the Interim Guideline as a requirement to document all identified routes with the same level of scrutiny as the proposed route, a requirement that may be extremely burdensome. Such a requirement could result in the utility considering fewer not more routes with a reduction in the thoroughness of the evaluative process. Other public utility comments voiced similar concerns. No non-utility comments objected to this provision. The OCA and Audubon support this requirement.

Resolution

Upon thorough consideration of the comments, the Commission is concerned that existing regulation 52 Pa. Code § 57.72(c)(10) may not provide sufficient information on alternative routes to enable this Commission to properly evaluate the utility applicant's evaluation process by which it concluded that the proposed route is the most appropriate. The Commission recognizes that transmission route selection is a complicated process involving many factors and requiring expensive and time-consuming surveys and analyses. Initially, many potential routes may be identified and then successively narrowed as the internal selection process progresses. Ultimately, the utility will identify a final group of transmission corridor alternatives from which its proposed route will be selected. The Commission therefore believes that sufficient details on the routes that the utility actively considered in the final phase of its route selection process should be included in the transmission siting application to enable the Commission to fully evaluate the reasonableness of the utility's route selection process. We note that PPL utilized this particular type of presentation in its application for the Susquehanna-Roseland route. Additionally, we note that proximity of proposed transmission routes to residential and non-residential structures as well as the utility's willingness to utilize existing ROWs are relevant considerations. Interim Guideline 5(iii) is revised consistent with the discussion above and requests the following information for each alternative route considered in the utility's final phase of selection: (1) the environmental, historical, cultural and aesthetic considerations of each route; (2) the proximity of these alternative routes to residential and non-residential structures; (3) the applicant's consideration of relevant existing rights-of-way; and (4) the comparative construction costs associated with each route. The Commission considers these additional informational requests to be consistent with the regulatory requirement at 52 Pa. Code § 57.72(c)(10). This Interim Guideline is adopted in Annex A at § 69.3105(3).

Section 5(iv)

Section 5(iv) requests provision of summary information addressing efforts made to contact and solicit assistance from local governments and other organizations on the identification of sensitive areas along the proposed routes. The Commission has proposed this Interim Guideline based on increased involvement of local municipalities and non-governmental organizations in transmission siting cases. For example, in the TrAILCo proceeding there was active involvement and interest by representatives of Greene and Washington Counties as well as a coalition of environmental organizations represented by the Environmental Conservation Counsel. Some of the witnesses appearing at the public input hearings in the TrAILCo case testified on behalf of either municipal governments or a non-governmental organization. Similarly in the PPL Susquehanna-Roseland case, Saw Creek Estates, a homeowners association was an active participant.

This Interim Guideline resulted in a number of comments. EAPA and Duquesne contend this requirement is unnecessarily vague and adds no clarity to the existing requirement contained in § 57.72(c)(8) which enumerates the information to be contained in the application regarding the location and identification of archeological, geological, historic, scenic or wilderness areas of significance. PECO is concerned this Interim Guideline confers standing to private special interest groups and that, if it is required to engage such groups, then the dynamic that

currently exists with such groups will change. PECO asserts that it already has an active outreach program that it currently utilizes in anticipation of transmission siting applications. PPL does not object to this Interim Guideline. OCA and Audubon support the Commission's efforts to seek out more information about local concerns in evaluating routes. No non-utility parties object to this provision. TNC offers some useful suggestions on identification of sensitive habitat that could be valuable to the utility in site selection.

Resolution

As referenced previously, involvement of local governments and non-governmental organizations in transmission siting proceedings has increased as evidenced in two recent transmission applications. This trend can be expected to continue. The Commission believes transmission siting applicants should identify and inform local governments, homeowner associations and certain non-governmental organizations such as land conservancies and historic preservation groups among others who may serve to identify public concerns with locating a transmission line along a specific route. The Commission believes that public outreach is an important part of the public utilities' responsibility to responsibly site transmission lines.

The Commission notes that public utilities such as PECO already utilize a public outreach process that informs and educates impacted parties of a proposed transmission line. PPL also employs similar educational procedures. We believe other public utilities employ similar practices to varying degrees depending on the level of transmission construction and the characteristics of the service territory. Moreover, the Commission believes local governments and non-governmental organizations can provide valuable input during the siting process to identify those impacts enumerated within § 57.72(c)(8). Affirmative outreach efforts to municipal governments may in fact make the transmission applicant aware of impacts (environmental, land use, historical, cultural, etc.) in siting transmission lines that its own consultants may have overlooked. Such affirmative efforts during the planning stage may even result in avoidance of an intervention or complaint during the application process. In recognition of the concerns raised by EAPA, this Interim Guideline will be adopted with the language modified to reflect contacts and assistance solicited from local governments and non-governmental organizations regarding identification of areas encompassed within the requirement of § 57.72(c)(8). This Interim Guideline is adopted in Annex A at § 69.3105(4).

Environmental Filing Requirements

The Commission, at Interim Guideline No. 6, requests public utility applicants provide a matrix showing all required federal, state and local government regulatory permitting and/or licensing requirements. The Commission requests similar information in less specific form at 52 Pa. Code § 57.72(11) and this guideline is designed to supplement that requirement. The Commission has proposed this guideline in recognition of the fact that the governmental licensing and permitting and the timelines associated with obtaining these licenses and permits may impact the ultimate completion of a transmission line project. For example, in the PPL Susquehanna-Roseland proceeding at Dkt. No. A-2009-2082652 (Order entered February 12, 2010), the Commission approved the siting of the Susquehanna-Roseland line but imposed some conditions relating to other regulatory approvals needed from the National Park Service.

Comments filed by electric utilities, including PPL, FirstEnergy, Allegheny and PECO, all noted that the scope of regulatory licensing and permitting approvals may not be fully known at the time of the transmission siting application filing and that such approvals can proceed at an unpredictable pace and not be complete at the time the Commission must rule on the application. Allegheny notes that the nature of environmental permitting and licensing is not known until the transmission route is selected. Further, agency contacts often change during the course of the permitting process. FirstEnergy and PPL are concerned that this requirement could impede the progress of a transmission line siting case since environmental licensing and permitting determinations often proceed on separate timelines than the siting application process.

PECO is concerned that imposition of this Interim Guideline not prejudice any public rights to participate in the environmental review process. PECO also requests that: (1) the matrix of permits reflect the utility's state of knowledge at the time of filing the application and that later permitting requirements not require a re-filing of the siting application and (2) that the utility not be required to obtain all environmental permits as a condition of obtaining Commission approval. Duquesne does not object to this Interim Guideline. No non-utility parties object to this requirement. OCA, Audubon and Brandywine affirmatively support these guidelines as enhancing the agency's ability to evaluate the feasibility of the project and allow for better coordination of agency efforts.

Resolution

The Commission is sensitive to all the concerns raised in the comments. First, the Commission reiterates that this Interim Guideline is largely for informational purposes to inform the Commission, the ALJ and the parties of potential impacts of other needed regulatory approvals. It should be reiterated that the Commission, although not an environmental permitting agency, is required, under 57 Pa. Code § 57.72(e)(7) and (8), to consider environmental impacts of proposed transmission lines. One of the most valuable ways to fulfill this requirement is to request information addressing environmental licensing and permitting. Second, the Commission appreciates the fact that environmental permitting is a wholly different process than the transmission siting procedures employed by the Commission. Third, we are also cognizant that the complete universe of environmental permitting may not be fully known at the time of the application filing. Fourth, there is a benefit to the Commission, as the site approval agency, to having knowledge of the scope of regulatory approvals that are required. As was noted in the Susquehanna-Roseland case, there may be a need to place conditions on the siting approval due to the need to obtain other permits. Further, the intent of this guideline is not to delay the Commission approval process nor, as PECO warns, will a failure to provide such information be a reason either to delay processing of the application or require a re-filing of the application. Finally, this Interim Guideline is designed to implement the existing practices of most jurisdictional utilities such as PPL that currently supply a list of expected major permits and licenses most likely to be required by federal, state and local agencies.

As suggested by both PPL and FirstEnergy, the Interim Guideline is modified to provide for public utility applicants to file a matrix or list which shows all expected federal, state and local government regulatory permits

and approvals that may be required for the project at the time of the application, the issuing agency, a timeline for approval and current status. This information need only be supplied on a best efforts basis. Additional information such as names of contact persons need not be provided. Additionally, periodic updates on the status of expected permits and licenses should be supplied during the course of the proceeding. The Interim Guideline in Annex A is modified accordingly and adopted as § 69.3106(1).

Health and Safety Considerations

(a) Interim Guidelines for Use of Herbicides and Pesticides

Section 7(a) of the Interim Guideline requests the suggested filing of a vegetation management plan that seeks to impose reasonable limits on the use of aerial chemical spraying. The Interim Guideline as issued requested the filing of information that includes the following components: (1) use of Environmental Protection Agency (EPA) approved chemicals only in suitable portions of the ROW on an infrequent basis; (2) application of chemicals only by trained professionals; (3) aerial spraying as a last resort and on an infrequent basis with defined zones around aquatic areas; (4) provision of notice to affected landowners; and (5) provision of landowner maintenance agreements that describe the duties and responsibilities of landowners and the utility.

The Commission notes that vegetation management practices have been and continue to be a controversial issue in transmission siting proceedings. For example in the TrAILCo case, vegetation management practices provoked significant public interest during the course of the case.

These proposed Interim Guidelines elicited a number of objections from public utilities. EAPA, Allegheny and FirstEnergy state that the proposed guidelines unduly restrict public utilities' flexibility to choose the most appropriate and cost-effective vegetation maintenance practices. FirstEnergy and Duquesne reference certain North American Electric Reliability Corporation (NERC) reliability standards that recommend the use of aerial vegetation maintenance and herbicide use in certain circumstances. FirstEnergy highlights PA Game Commission procedures that employ aerial vegetation management practices. PECO filed detailed comments that make the following points: (1) the Interim Guidelines contain an embedded assumption that less use of herbicides is better; (2) the use of herbicides is adequately regulated by the EPA; (3) the guidelines are not implementable; (4) no cost-benefit analysis was performed; and (5) the guidelines "lock in a protocol" which cannot be altered. PPL does not object to provision of the maintenance plan but cautions that it should not be provided as part of Letter of Notification (LON) applications. The OCA explicitly supports the requirements of the Interim Guideline noting the continuing controversy surrounding the use of herbicides.

Resolution

In response, the Commission notes that aerial herbicide use has been and will continue to be a controversial issue especially near aquatic areas and agricultural and livestock facilities. Further, 52 Pa. Code § 57.72(e)(7) authorizes the Commission to examine environmental impacts of transmission lines including vegetation maintenance. Section 57.72(6) requires the filing of a statement of safety considerations that will be incorporated into the maintenance of the proposed line. Thus, it is reasonable for the Commission to require provision of information

from transmission siting applicants regarding public utility vegetation maintenance practices to establish a baseline of knowledge on these issues. Finally, it is reasonable to require public utilities to provide educational information to affected landowners along the ROW including the option of landowner maintenance agreements to allow landowners to understand their rights and obligations with respect to public utility maintenance practices. The Interim Guidelines were narrowly designed to accomplish these goals.

Conversely, it is not the Commission's intent, in proposing these guidelines, to act as a "local EPA" nor is it seeking to impose additional costs on public utilities where aerial (or other forms of vegetation application) are both safe and cost-effective. The Commission notes that a sister agency, the PA Game Commission, has recognized the benefits of prudent aerial application of herbicides on state game lands. The Commission is not establishing binding requirements in the nature of regulations that require use of a particular form of vegetation maintenance practice.

However, our obligation to review siting applications does require a certain level of information regarding environmental impacts and responsiveness to public concerns over vegetation maintenance practices along ROWs where transmission lines are located. The Commission would be neglecting its statutory responsibilities if it did not examine the environmental impacts associated with transmission line maintenance.

In recognition of valid concerns raised by the electric utility comments, some modifications to the Interim Guidelines are appropriate. The Commission will refrain from dictating where and when certain herbicides should be used and the manner of application including aerial application but will expect a detailed explanation of these practices be provided with the siting application. The Commission will propose that public utility applicants file, as part of their siting application, a vegetation maintenance plan that fully describes the types of herbicides used, factors relevant to each type of application and herbicide application practices utilized when engaging in aerial spraying near aquatic areas and other sensitive locations such as agricultural zones. The vegetation management plan should also describe the manner of informing and interfacing with landowners regarding vegetation management and should include a sample notice provided to affected landowners. As stated in the Interim Guidelines, there should also be included, with the transmission siting application, a sample landowner agreement that describes the duties and responsibilities of landowners and the utility with reference to ROW maintenance practices. This matter will be addressed in greater detail in the Proposed Rulemaking.

Therefore, the Commission will modify the Interim Guideline to request the filing of information regarding the utilities' detailed vegetation maintenance program which includes: (i) a general description of the utility's vegetation management plan; (ii) factors that dictate when each method including aerial spraying is utilized; (iii) vegetation management practices near aquatic areas and other sensitive locations; (iv) provision of reasonable notice to affected landowners regarding vegetation management practices; and (v) provision of a landowner maintenance agreement to the extent utilized. This Interim Guideline is adopted in Annex A at § 69.3107(a).

Electromagnetic Field (EMF) Mitigation Practices

Section 7(b) of the proposed Interim Guidelines request the filing of a detailed EMF mitigation plan that includes

design alternatives and routing of lines to minimize exposure to populated areas. Inclusion of this guideline was prompted by expert and public input testimony primarily in the TrAILCo and Susquehanna-Roseland proceedings. The Commission currently requires at 52 Pa. Code § 57.72(c)(6) the filing of a statement of the safety considerations incorporated into the design, construction and maintenance of the proposed line which can include consideration of EMF effects.

This Interim Guideline invited a number of opposing comments from the electric utility sector. Duquesne opposes the Commission imposing "new regulations" regarding EMF because such a requirement pre-supposes there is a standard regarding EMF that should be met. Duquesne also contends that controversy still exists regarding the actual health effects of EMF. Allegheny contends that imposition of this guideline will lead to additional costs for ratepayers such as more expensive taller lines. PECO states that this Commission has had opportunities to examine the possible health effects of EMF, most recently in the Susquehanna-Roseland proceeding, and has never concluded demonstrative health effects on the public from EMF. PECO suggest using a "prudent avoidance" policy as opposed to the procedure prescribed in the Interim Guideline. OCA supports this guideline.

Resolution

The Commission believes that EMF, while an unsettled and controversial issue, continues to raise much concern in the minds of those landowners situated near a transmission line. The Commission agrees that no definitive scientific proof of a "cause and effect" nature exists which connects EMF with public health hazards although research on the subject continues. The Commission must balance the need to address valid public health issues raised by transmission line siting against the potential for greater cost to public utilities from having to re-design or alter routes to reduce EMF exposure. The Commission understands that its regulated utilities are aware of the potential hazards and do incorporate EMF mitigation procedures in the design of their lines.

Upon consideration of the various comments, we recommend adoption of PECO's suggested "prudent avoidance" policy in place of the language appearing in the Tentative Order. Adoption of a "prudent avoidance" policy provides the utility applicant with the flexibility to describe how its transmission design practices are related to its efforts to mitigate EMF impacts. Parties can then explore these policies in the course of hearings. We have basically adopted the language proposed by PECO with some modifications. The Commission will request additional input from the parties on this issue in the upcoming rulemaking proceeding. This Interim Guideline is adopted at § 69.3107(b).

Additional Issues Raised by the Comments

A number of parties raised issues in their comments which were not included within the parameters established for the Interim Guidelines in the Tentative Order. Many of these comments are relevant to the transmission siting process generally and the Commission appreciates their submission. Additionally, many of these issues, while well-considered, have not been subject to review and comment by all parties and the unilateral inclusion of additional Interim Guidelines would have been unfair to certain parties and procedurally improper. Nevertheless, the Commission appreciates these comments, encourages their re-submittal and will give full consideration to these issues in the Proposed Rulemaking.

Formatting Changes

OTS has proposed a number of minor formatting changes to the Interim Guidelines. These changes, while helpful, could not be adopted given the revisions made to the final version of the guidelines in Annex A.

Reliability, Solutions and Costs

OTS requests that transmission siting applications include “documentation for each and every present and projected individual reliability criteria violation sought as justification for or otherwise related to the construction and siting of the proposed high voltage transmission line.” OTS contends that inclusion of this information will: (1) give the Commission the opportunity to consider whether the proposed construction and siting will enhance reliability; (2) require applicants to describe available alternatives; and (3) require applicants to provide cost comparisons between construction of high voltage transmission, lower voltage lines or non-transmission alternatives.

The Commission notes this proposal with interest and believes information of this nature may have useful application in future transmission siting proceedings. OTS’ proposal addresses an issue that was not referenced as part of the Interim Guidelines and has not been subject to full review and comment. It would be inappropriate to include this proposed change in the Interim Guidelines at this time. The Commission believes the forthcoming Proposed Rulemaking would be the appropriate forum for consideration of this issue.

Public Need

OCA and the Brandywine Conservancy suggest that the Interim Guidelines incorporate a requirement for submission of additional information by the electric utility applicant in support of a “public need” requirement that currently exists in a very generalized form in 52 Pa. Code §§ 57.75(e)(1) and 57.76(a)(1). OCA further comments that the Tentative Order’s failure to include guidelines addressing “public need” may indicate intent by the Commission not to consider this issue in future transmission siting cases.

The Commission agrees with OCA and Brandywine that “public need” is a critical issue and that the current regulations do not adequately address the evolving nature of transmission planning from a fundamentally intrastate activity to a regional planning process. The Commission intentionally avoided addressing this important issue in the Tentative Order establishing Interim Guidelines due to its complexity, the significant volume of comments expected to be filed and the extensive amount of time necessary to formulate the necessary regulations addressing this important issue. The Commission assures interested parties that the issue of “public need,” in the context of regional transmission planning, will be fully and completely addressed in the Proposed Rulemaking.

Applicability of Interim Guidelines to Letters of Notification (LON)

The Commission has adopted regulations at 52 Pa. Code § 57.72(d) which establish procedures for obtaining approval of smaller transmission line projects utilizing LON procedures. Duquesne filed comments suggesting modification of the Commission’s LON process to more precisely describe which projects are subject to LON procedures. Allegheny filed comments suggesting the LON regulations be modified to accommodate anticipated increased construction of short transmission lines to serve industrial customers and projects necessitated by the Marcellus Shale development. The Commission agrees

with the comments of both Duquesne and Allegheny regarding the need to update its LON regulations. The Commission was not aware of those specific concerns at the time of issuance of the Interim Guidelines. The Commission will incorporate into the Proposed Rulemaking proceedings consideration of the need to update its regulations governing the LON process.

Environmental Impacts

Both TNC and the Game Commission filed limited comments generally supportive of the Interim Guidelines. The TNC recommended a number of additional items designed to minimize ecological damage during the siting of transmission lines including conducting inventories of ecological resources along proposed routes, identification of areas of conservation importance, minimizing impacts on resources and evaluation of existing ROWs as part of the route selection process. TNC also suggests that the impacts of transmission line “noise” be considered. The Game Commission recommended consideration of a document prepared by the Western Governors Association and the U.S. Department of Energy that integrates environmental considerations into energy resource planning.

The Commission appreciates the comments of both TNC and Game Commission. It should be noted that the existing regulations at 52 Pa. Code § 57.73(c)(7), (8) already require electric utilities to consider a number of environmental factors in the siting of transmission lines. Electric utilities currently seek to use existing ROWs to the extent possible to avoid costly land acquisition and/or condemnation processes. This practice minimizes environmental impacts. The upcoming rulemaking will revisit the Commission’s existing regulations regarding the types of environmental, conservation and land-use factors that should be considered in the siting process.

Additionally, the comments of both TNC and the Game Commission are well-considered but go beyond the scope of the Interim Guidelines. Because these suggestions have not been subject to notice and comment, the Commission cannot unilaterally incorporate these suggestions at this time. The TNC and Game Commission are encouraged to re-submit their suggestions during the upcoming rulemaking.

Publication of Interim Guidelines in the Pennsylvania Code

In the Tentative Order, it was the original intent of the Commission to implement these Interim Guidelines exclusively through a Commission order. In light of the volume of comments received and the expected timeline to complete the Proposed Rulemaking, we have reconsidered the manner of publication of these guidelines. We are publishing the Interim Guidelines both in the *Pa. Bulletin* and the *Pennsylvania Code* at § 69 which encompasses Policy Statements and Guidelines. Publication of these guidelines in the *Pennsylvania Code* is appropriate since the rulemaking process may take in excess of a year to complete. Additionally, publication of these provisions in the *Pennsylvania Code* will enable public utility applicants and other interested parties to easily locate these guidelines in a single location.

Conclusion

The Commission adopts the Interim Guidelines as set forth in Annex A as final under 66 Pa.C.S. §§ 1501 and 2805 and 52 Pa. Code §§ 57.72—57.76; *Therefore,*

It Is Ordered That:

1. The Interim Guidelines in §§ 69.3101—69.3107 are hereby adopted.

2. These Interim Guidelines in §§ 69.3101—69.3107 become effective upon publication in the *Pennsylvania Bulletin*.

3. These Interim Guidelines in §§ 69.3101—69.3107 shall be published in the *Pennsylvania Code*.

4. A copy of this order and Annex A shall be served on all jurisdictional electric utilities, the Office of Consumer Advocate and the Office of the Small Business Advocate and all parties that filed comments at Docket M-2009-2141293.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: Fiscal Note 57-282. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

INTERIM GUIDELINES FOR THE FILING OF ELECTRIC TRANSMISSION LINE SITING APPLICATIONS

§ 69.3101. Scope.

(a) The Commission adopts this section and §§ 69.3102—69.3107 regarding the additional information that should be provided with a transmission siting application by an electric utility under §§ 57.71—57.76 (relating to Commission review of siting and construction of electric transmission lines). The Commission encourages future applicants to file applications that comply with the existing regulations as supplemented by this section and §§ 69.3102—69.3107 to ensure that adequate additional information is provided and to ensure the efficient and expeditious processing of transmission siting applications. In the event an applicant determines there to be a conflict between the information requested in this section and §§ 69.3102—69.3107 and the existing regulations, the applicant should follow the requirements in §§ 57.71—57.76.

(b) The Commission emphasizes that this section and §§ 69.3102—69.3107 do not alter the legal standards to be met by prospective applicants under relevant provisions in 66 Pa.C.S. (relating to Public Utility Code) or the existing regulations in §§ 57.71—57.76.

§ 69.3102. Public notice filing requirements.

(a) Applications for electric transmission siting authority should provide the following information with the initial application for siting approval demonstrating its efforts to fully notify landowners who are either owners of land that will be purchased for the transmission project or will be subject to right of way/easement requirements:

(1) A Code of Conduct/Internal Practices governing the manner in which public utility employees or their agents interact with landowners along proposed rights of way.

(2) Copies of information provided to landowners by the public utility of any publicly disseminated notices advising landowners to contact the Commission or the Office of Consumer Advocate (OCA) in the event of improper land agent practices.

(3) Copies of all notices sent under § 57.91 (relating to disclosure of eminent domain power of electric utilities).

(b) Applicants for transmission siting authority should serve a copy of the Code of Conduct on all landowners along the proposed route whose property is to be purchased, subject to easement rights or borders the transmission corridor. The Code of Conduct should also be available on the applicant's website.

(c) Applicants for transmission siting authority should provide prior notice to the Commission's Office of Communications of informational presentations to community groups by the public utility scheduled after the filing of the transmission siting application so that the Commission, OCA and other interested parties can attend meetings or obtain copies of information being disseminated at the presentations.

§ 69.3103. Eminent domain filing requirements.

Applicants for eminent domain authority should follow the following requirements and provide the following information as part of the application:

(1) Applicants for transmission siting authority should file applications for all known eminent domain authority as separate filings, but simultaneously with the associated transmission siting applications. Testimonial evidence in support of an eminent domain application should be filed with the application. Subsequent eminent domain authority applications should be filed as soon as reasonably known during the course of the transmission siting application.

(2) As part of an eminent domain application, the public utility applicant should present, for those properties subject to condemnation at the time the transmission siting application is filed or later in the siting proceeding, the reason for the exercise of condemnation power for each property and the precise location of the affected property. Supporting maps or legal descriptions of the property to be condemned should be supplied to the extent feasible. Submission of information pursuant to this guideline should be consistent with the filing requirements for the exercise of eminent domain powers under 26 Pa.C.S. § 302(b)(5) (relating to declaration of taking).

(3) A public utility transmission siting application should include a summary status report for those properties along the proposed transmission route where negotiations for either property acquisition or rights of way/easements may be ongoing. This information should be supplemented as requested by the administrative law judge or the parties during the course of the transmission siting proceeding.

§ 69.3104. Exemption from municipal zoning standards.

Applications for exemption from municipal zoning requirements should provide the following information with the application:

(1) Copies of comprehensive land use plans, zoning ordinances and other documentation relevant to the buildings affected by the exemption request. This information may be filed in either hard copy or electronic format.

(2) Provision of metes and bounds or site maps of building sites.

(3) A procedure for providing notice to affected municipalities of the request for exemption.

§ 69.3105. Route evaluation and siting.

Applications for the siting of electric transmission lines should provide the following information as part of the § 57.72(c) (relating to form and content of application) requirements:

(1) Transmission applicants should utilize a combination of transmission route evaluation procedures including high-level GIS data, traditional mapping (including United States Geological Survey data and compilation), aerial maps and analysis of physical site specific constraints raised by affected landowners.

(2) Transmission applicants should summarize the status of property acquisitions (including fee simple acquisitions and rights of way/easements) as part of the application. The applicant should provide the current status and continuing updates on property acquisition litigation or settlements during the course of the siting proceeding.

(3) In providing information regarding the reasonable alternative routes, the utility actively considered in its final phase of the route selection process, and the relative merits of each, in accordance with § 57.72(c)(10), the applicant should include the following information:

(i) The environmental, historical, cultural and aesthetic considerations of each route.

(ii) The proximity of these alternative routes to residential and nonresidential structures.

(iii) The applicant's consideration of relevant existing rights of way.

(iv) The comparative construction costs associated with each route.

(4) With reference to the proposed route, applicants should provide a summary of efforts made to contact and solicit assistance from local governments and nongovernmental organizations regarding areas encompassed within the requirement of § 57.72(c)(8).

§ 69.3106. Environmental filing requirements.

Applications for siting of electric transmission lines should include as part of the filing requirement under § 57.72(e)(7) the following information: A matrix or list

showing all expected Federal, state and local government regulatory permitting or licensing approvals that may be required for the project at the time the application is filed, the issuing agency, approximate timeline for approval and current status. The applicant should provide an update on the status of the regulatory permitting/licensing approvals as the case progresses.

§ 69.3107. Health and safety considerations.

(a) *Interim guidelines for the use of herbicides and pesticides.* Applicants for transmission line siting authority should provide a detailed vegetation management plan that includes the following components:

(1) A general description of the utility's vegetation management plan.

(2) Factors that dictate when each method, including aerial spraying, is utilized.

(3) Vegetation management practices near aquatic and other sensitive locations.

(4) Notice procedures to affected landowners regarding vegetation management practices.

(5) Provision of a copy of a landowner maintenance agreement that describes the duties and responsibilities of landowners and the utility for vegetation management to the extent utilized.

(b) *Interim guidelines for Electromagnetic Field (EMF) impacts.* Transmission siting applications should include the following: A description of the EMF mitigation procedures that the utility proposes to utilize along the transmission line route. This description should include a statement of policy approach for evaluating design and siting alternatives and a description of the proposed measures for mitigating EMF impacts.

[Pa.B. Doc. No. 10-2362. Filed for public inspection December 10, 2010, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Temporary Order Designating Dangerous Transmissible Diseases

The Department of Agriculture (Department) issues a temporary order designating West Nile Encephalitis (WNE), Chronic Wasting Disease (CWD), Spring Viremia of Carp (SVC), Viral Hemorrhagic Septicemia (VHS), Lymphocytic Choriomeningitis Virus (LCMV) and the neurologic form of Equine Rhinopneumonitis or Equine Herpes Virus (EHV-1) as "dangerous transmissible diseases." These designations are made under the authority of 3 Pa.C.S. §§ 2301—2389 (relating to Domestic Animal Law).

This temporary order is the successor to a previous temporary order with respect to these same diseases, as published at 39 Pa.B. 6774 (November 28, 2009), that made the same dangerous transmissible disease designations. This previous temporary order will expire as of January 1, 2011.

Under 3 Pa.C.S. § 2327(a) (relating to disease surveillance and detection), the Department has authority to monitor the domestic animal population of this Commonwealth to determine the prevalence, incidence and location of transmissible diseases of animals. Under 3 Pa.C.S. § 2321(d) (relating to dangerous transmissible diseases), the Department has authority to declare a disease that has not been specifically identified in that statute as a "dangerous transmissible disease" to be a dangerous transmissible disease through issuance of a temporary order making that designation.

1. WNE

WNE is a disease of public health significance. It also poses a threat to domestic animal health and to the economic well being of domestic animal industries—particularly the equine industry. Section 2322(c) of 3 Pa.C.S. (relating to neoplastic diseases, metabolic diseases and heritable diseases) requires the Department to proceed with the agreement of the Department of Health (Health) when it adds a disease of public health significance to the list of designated dangerous transmissible diseases. Both the Department and Health agreed upon adding WNE to the list of dangerous transmissible diseases and to the reissuance of this temporary order.

WNE is an infection of the brain caused by the West Nile virus. Although West Nile virus has, in the past, been found most typically in Africa, Eastern Europe and West Asia, it was detected in the New York City area and in parts of New Jersey in 1999. It has spread across the United States since then. In mild cases of human disease, infection can cause fever, headache, body aches, skin rash and swollen lymph glands. In more severe cases, it can cause headache, high fever, neck stiffness, stupor, disorientation, coma, tremors, paralysis and occasional convulsions. In animals, horses and birds appear to be most susceptible to illness following infection, although reports of illness in other species are increasing.

Humans and animals can acquire West Nile virus through a bite from a mosquito that has bitten an infected bird. The designation of WNE as a "dangerous transmissible disease" will facilitate the Department's

surveillance of birds, horses and other animals for the presence of the West Nile virus or WNE. The designation will also help the Department in providing assistance to Health and other public health agencies in monitoring and treatment efforts.

2. CWD

CWD is a disease of whitetail deer, elk and other cervids and is a member of the group of diseases known as transmissible spongiform encephalopathies (TSEs). Other more well-known TSEs are scrapie and bovine spongiform encephalopathy (BSE) or "mad cow" disease. All are thought to be caused by a protein that has converted to an abnormal infectious form known as a "prion." There is some evidence, in the case of BSE, that humans may become infected through consumption of meat products containing central nervous system tissues, thus there is a significant public health interest concerning all TSEs.

A number of states have, in recent years, instituted import regulations requiring that cervids entering those states: (1) originate from herds that are participating in a surveillance program; and (2) originate from states that have authority to take action in the event that CWD is diagnosed. The designation of CWD as a "dangerous transmissible disease" will facilitate the development and oversight of a surveillance program and will help the Department react and take action in the event CWD is detected.

3. SVC

SVC is caused by a ribonucleic acid virus known as *Rhabdovirus carpio* and is considered an emerging disease in the United States. SVC poses a threat to both domestic fish health and wild fish health in this Commonwealth and has the potential to create a significant adverse economic impact on this Commonwealth's aquaculture industry.

The SVC virus readily infects species of the *Cyprinidae* family (carp and minnows) and spreads through direct contact with infected fish and through shared infected water sources. Symptoms typically appear in the spring time as water temperatures increase. Symptoms in infected fish range from undetectable through mild disease to sudden massive die-off.

There is no specific treatment for fish infected with SVC and no vaccine to prevent the disease. Once natural water resources become infected, SVC may be impossible to eradicate and may pose a permanent threat to aquaculture facilities utilizing those water sources.

4. VHS

VHS virus is a serious pathogen of fresh and saltwater fish that is causing an emerging disease in the Great Lakes region of the United States and Canada. VHS virus is a rhabdovirus (rod shaped virus) that affects fish of all size and age ranges. It does not pose any threat to human health. VHS can cause hemorrhaging of fish tissue, including internal organs, and can cause the death of infected fish. Once a fish is infected with VHS, there is no known cure. Not all infected fish develop the disease, but they can carry and spread the disease to other fish. The World Organization of Animal Health has categorized VHS as a transmissible disease with the potential for profound socio-economic consequences.

5. *LCMV*

LCMV is known to cause potentially fatal disease in humans and is capable of being spread by various rodent species. From time to time, outbreaks have occurred in the United States—necessitating swift investigation and disease containment strategies in order to protect human health.

6. *Neurologic Form of EHV-1*

EHV-1 is a highly contagious virus that is ubiquitous in horse populations worldwide. The age, seasonal and geographic distributions vary and are likely determined by immune status and concentration of horses. Infection with EHV-1 most commonly causes respiratory illness, characterized by fever, rhinopharyngitis and tracheobronchitis. Infection may also cause abortions in pregnant mares, following clinical or subclinical infection, and can be fatal to newborn foals. A further, infrequent clinical resultant effect of EHV-1 infection is the development of neurologic disease. Depending upon the location and extent of the lesions, signs of neurologic disease may vary from mild incoordination and posterior paresis to severe posterior paralysis with recumbency, loss of bladder and tail function, and loss of sensation to the skin in the perineal and inguinal areas, even the hindlimbs. In exceptional cases, the paralysis may be progressive and culminate in quadriplegia and death.

Transmission of EHV-1 occurs by direct or indirect contact with infective nasal discharges, aborted fetuses, placentas or placental fluids. Transmission can occur by means of coughing or sneezing over a distance of up to 35 feet, as well as by direct contact with infected horses, feed and equipment.

There is currently no known method to reliably prevent the neurologic form of EHV-1 infection. Sound management practices, including isolation, are important to reduce the risk of infection with EHV-1. Maintaining appropriate vaccination protocols may also be prudent in an attempt to reduce the incidence of the respiratory form of EHV-1 infection, which may reduce the incidence of the neurologic form.

Order

The Department hereby designates WNE, CWD, SVC, VHS, LCMV and EHV-1 “dangerous transmissible diseases” under 3 Pa.C.S. § 2321(d). This order supplants any previous temporary order making a designation.

This order shall take effect as of January 1, 2011, and shall remain in effect until no later than January 1, 2012. This Department may: (1) reissue this temporary order to extend the designation beyond January 1, 2012; (2) allow this temporary order to expire on January 1, 2012; (3) supplant this temporary order with a formal regulation; or (4) modify this temporary order.

Questions regarding this temporary order may be directed to Craig Shultz, DVM, Director, Bureau of Animal Health and Diagnostic Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-2852.

RUSSELL C. REDDING,
Secretary

[Pa.B. Doc. No. 10-2363. Filed for public inspection December 10, 2010, 9:00 a.m.]

DEPARTMENT OF BANKING

Actions on Applications

The Department of Banking (Department), under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending November 23, 2010.

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

BANKING INSTITUTIONS

Branch Applications

De Novo Branches

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
11-12-2010	First Commonwealth Bank Indiana Indiana County	345 Court Street Coraopolis Allegheny County (Limited Service Facility)	Opened
11-15-2010	Northwest Savings Bank Warren Warren County	10444 US Highway 522 South Lewistown Mifflin County	Opened

Branch Discontinuances

<i>Date</i>	<i>Name and Location of Applicant</i>	<i>Location of Branch</i>	<i>Action</i>
11-12-2010	Northwest Savings Bank Warren Warren County	51 West Market Street Lewistown Mifflin County	Closed

Articles of Amendment

<i>Date</i>	<i>Name and Location of Institution</i>	<i>Action</i>
11-16-2010	Public Savings Bank Huntingdon Valley Montgomery County	Filed

Amendment to Article III of the institution's Articles of Incorporation increases the total number of shares of all capital stock which the institution shall have the authority to issue from 4,000,000 shares to 12,000,000 shares of capital stock by: (i) increasing the number of shares of voting common stock from 3,000,000 shares to 5,000,000 shares, having no par value per share; (ii) creating a new class of capital stock consisting of 5,000,000 shares of non-voting common stock with no par value; and (iii) increasing the shares of preferred stock from 1,000,000 shares to 2,000,000 shares of preferred stock, having such par value or no par value as may be determined by the Board of Trustees of the institution.

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

No activity.

The Department's web site at www.banking.state.pa.us includes public notices for more recently filed applications.

STEVEN KAPLAN,
Secretary

[Pa.B. Doc. No. 10-2364. Filed for public inspection December 10, 2010, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Snowmobile and ATV Advisory Committee Meeting

The Snowmobile and ATV Advisory Committee of the Department of Conservation and Natural Resources (Department) has a meeting scheduled for Friday, December 17, 2010. The meeting will be held at 9:30 a.m. in the 6th Floor Conference Room, Rachel Carson State Office Building, Harrisburg, PA.

Questions concerning this meeting or agenda items should be directed to Vanyla Tierney at (717) 783-2654.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Vanyla Tierney at (717) 783-2654 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TTD) to discuss how the Department may accommodate their needs.

JOHN QUIGLEY,
Secretary

[Pa.B. Doc. No. 10-2365. Filed for public inspection December 10, 2010, 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 regarding industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFO). This notice is provided in

accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

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

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

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

Unless indicated otherwise, the United States Environmental Protection Agency (EPA) Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on NPDES applications are invited to submit statements to the contact office noted before the application within 30 days from the date of this public notice. Persons wishing to comment on WQM permit applications are invited to submit statements to the office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final determinations regarding the applications. A comment submittal should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for public hearings on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PA0062405 (Sewage)	Scott Tech Park Discovery Road Scott Township, PA 18447	Lackawanna County Scott Township	An unnamed tributary to South Branch Tunkhannock Creek (4-F) TSF	Y
PA0060640 (Sewage)	Pennsylvania American Water Company PAW-Saw Creek Estates WWTF Winona Falls Road Bushkill, PA 18324	Pike County Lehman Township	Saw Creek (1-D)	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0248478 - CAFO	Greater Vision Farm CAFO 144 Five Points Road Mertztown, PA 19539	Berks County / Richmond Township	Moselem Creek / 3-B	Y
PAS203502 - IW	Bonney Forge Corporation PO Box 330 Mount Union, PA 17066	Huntingdon County / Shirley Township	UNT to Juniata River / 12-C	Y
PA0082333 - Sew	Conestoga Hills Community 1230 Stony Lane Conestoga, PA 17516	Lancaster County / Conestoga Township	UNT Stehman Run / 7-J	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0101621 (Industrial Waste)	Bradford City WTP West Corydon Street Extension Bradford, PA 16701	McKean County Bradford Township	Kissem Run and West Branch Tunungwant Creek (16-C)	Y
PA0222933 (Industrial Waste)	John Maneely Co. d/b/a Wheatland Tube Company 20 Church Street Wheatland, PA 16161	Mercer County Wheatland Borough	Shenango River (20-A)	Y
PA0025445 (Sewage)	Wampum Borough STP 101 Water Street Wampum, PA 16157	Lawrence County Wampum Borough	Beaver River (20-B)	Y

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

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

PA0062138, Industrial Waste, SIC Code 5169, **Airgas Specialty Products Inc.**, 2530 Sever Road, Lawrenceville, GA 30043. Facility Name: Airgas Specialty Products Inc. This existing facility is located in Palmerton Borough, **Carbon County**.

Description of Existing Activity: The application is for a renewal of an NPDES permit for an existing discharge of treated Industrial Waste. The renewal includes a name change, from LaRoche Industries, Inc.

The receiving stream(s), Aquashicola Creek, is located in State Water Plan watershed 2-B and is classified for Trout Stocking and Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 (cooling tower blowdown) are based on a design flow of 0.0005 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0

The proposed effluent limits for Outfall 002 (non-contact cooling water and cooling tower blowdown) are based on a design flow of 0.002 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Temperature (° F)	XXX	XXX	XXX	XXX	XXX	110

The proposed effluent limits for Outfall 003 (Reverse Osmosis water purification reject water) are based on a design flow of 0.025 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0

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

- Chemical additives
- Stormwater "No Exposure"

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-826-5472.

The EPA Waiver is in effect.

PA0060801, Sewage, SIC Code 4952, **Montrose Municipal Authority**, P. O. Box 306, Montrose, PA 18801-1219. Facility Name: Montrose Municipal Authority WWTP. This existing facility is located in Bridgewater Township, **Susquehanna County**.

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

The receiving stream, an Unnamed Tributary to Pettis Creek, is located in State Water Plan watershed 04D and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.82 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen (Interim)	XXX	XXX	5.0	XXX	XXX	XXX
Dissolved Oxygen (Final) *	XXX	XXX	Inst Min 6.0 Inst Min	XXX	XXX	XXX
Total Residual Chlorine (Interim)	XXX	XXX	XXX	0.02	XXX	0.05
Total Residual Chlorine (Final) *	XXX	XXX	XXX	0.03	XXX	0.08
CBOD ₅ (Interim)	171	273	XXX	25	40	50
CBOD ₅ (Final) *	102	Wkly Avg 136 Wkly Avg	XXX	15	Wkly Avg 20 Wkly Avg	30
Total Suspended Solids (Interim)	205	307	XXX	30	45	60
Total Suspended Solids (Final) *	102	Wkly Avg 136 Wkly Avg	XXX	15	Wkly Avg 20 Wkly Avg	30
Fecal Coliform (CFU/100 ml) May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1000
Fecal Coliform (CFU/100 ml) Oct 1 - Apr 30	XXX	XXX	XXX	2000 Geo Mean	XXX	10000
Ammonia-Nitrogen May 1 - Oct 31 (Interim)	13	XXX	XXX	2.0	XXX	4.0
Ammonia-Nitrogen Nov 1 - Apr 30 (Interim)	41	XXX	XXX	6.0	XXX	12.0
Ammonia-Nitrogen May 1 - Oct 31 (Final) *	10	XXX	XXX	1.5	XXX	3.0
Ammonia-Nitrogen Nov 1 - Apr 30 (Final) *	30	XXX	XXX	4.5	XXX	9.0
Total Phosphorus	XXX	XXX	XXX	Report	XXX	XXX
Total Copper	Report	Report	XXX	Report	Report	XXX
Total Mercury	Report	Report	XXX	Report	Report	XXX
Total Silver	Report	Report	XXX	Report	Report	XXX
Total Zinc (Interim)	Report	Report	XXX	Report	Report	XXX
Total Zinc (Final) *	0.55	0.82	XXX	0.081	0.12	XXX
Chloroform	Report	Report	XXX	Report	Report	XXX
Tetrachloroethylene	Report	Report	XXX	Report	Report	XXX

* Final permit limits will be in effect from December 1, 2012 to Permit Expiration Date.

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

<i>Parameters</i>	<i>Mass (lbs)</i>		<i>Minimum</i>	<i>Concentration (mg/l)</i>	
	<i>Monthly</i>	<i>Annual</i>		<i>Monthly Average</i>	<i>Maximum</i>
Ammonia—N	Report	Report**		Report	
Kjeldahl—N	Report			Report	
Nitrate-Nitrite as N	Report			Report	
Total Nitrogen	Report	Report		Report	
Total Phosphorus	Report	Report		Report	
Net Total Nitrogen (Interim)	Report	Report			
Net Total Nitrogen (Final) *	Report	14,977*			
Net Total Phosphorus (Interim)	Report	Report			
Net Total Phosphorus (Final) *	Report	1,997*			

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and

Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

* The compliance date for Net Total Nitrogen and Net Total Phosphorus will begin on December 1, 2012. Since these reporting requirements are annual loads, the reporting on compliance with the annual limitations will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2014. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until November 30, 2012.

** Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2014.

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

- Chesapeake Bay Schedule
- Chesapeake Bay Nutrient Schedule
- Toxics Reduction Evaluation

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 570-826-5472.

The EPA Waiver is not in effect.

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

PA0007552, Industrial Waste, **Empire Kosher Poultry Inc.**, 247 Empire Drive, Mifflintown, PA 17059. Facility Name: Empire Kosher Poultry. This existing facility is located in Walker Township, **Juniata County**.

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

The receiving stream(s), Juniata River, is located in State Water Plan watershed 12-A and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 2.2 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.6
CBOD ₅	Report	Report	XXX	19.3	31.4	40
Total Suspended Solids	Report	Report	XXX	24.2	36.3	60
Oil and Grease	Report	Report	XXX	13.9	24.2	35
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	XXX
				Geo Mean		
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30 (interim)				40,217		
Oct 1 - Apr 30 (final)	XXX	XXX	XXX	2,000	XXX	XXX
				Geo Mean		
Nitrate-Nitrite as N	XXX	XXX	XXX	Report	XXX	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	XXX	XXX	XXX
	Total Mo					
Total Nitrogen	XXX	XXX	XXX	103	147	XXX
Total Nitrogen						
Effluent Net	Report	XXX	XXX	XXX	XXX	XXX
	Total Mo					
Total Nitrogen	Report	XXX	XXX	XXX	XXX	XXX
	Total Mo					
Total Nitrogen	XXX	Report	XXX	XXX	XXX	XXX
		Total Annual				
Total Nitrogen						
Effluent Net (Interim)	XXX	Report	XXX	XXX	XXX	XXX
		Total Annual				
Total Nitrogen						
Effluent Net (Final)	XXX	21,928	XXX	XXX	XXX	XXX
		Total Annual				
Ammonia-Nitrogen	580	1157	XXX	31.6	63.2	79

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
Ammonia-Nitrogen	Report	XXX	XXX	XXX	XXX	XXX
Ammonia-Nitrogen	Total Mo XXX	Report Total Annual	XXX	XXX	XXX	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Kjeldahl Nitrogen	Report	XXX	XXX	XXX	XXX	XXX
Total Phosphorus	Total Mo Report	XXX	XXX	Report	XXX	5
Total Phosphorus	XXX	Report	XXX	XXX	XXX	XXX
Total Phosphorus		Total Annual				
Total Phosphorus Effluent Net	Report	XXX	XXX	XXX	XXX	XXX
Total Phosphorus	Total Mo Report	XXX	XXX	XXX	XXX	XXX
Total Phosphorus	Total Mo					
Total Phosphorus Effluent Net (Interim)	XXX	Report	XXX	XXX	XXX	XXX
Total Phosphorus		Total Annual				
Total Phosphorus Effluent Net (Final)	XXX	740	XXX	XXX	XXX	XXX
		Total Annual				

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is not in effect.

PA0043575, Sewage, SIC Code 4952, **Lykens Borough Authority Dauphin County**, 200 Main Street, Lykens, PA 17048-1132. Facility Name: Lykens STP. This existing facility is located in Lykens Borough, **Dauphin County**.

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

The receiving stream(s), Wiconisco Creek, is located in State Water Plan watershed 6-C and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.41 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Instant. Maximum</i>
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.63
CBOD ₅	85	136	XXX	25	40	50
Total Suspended Solids	102	Wkly Avg 153	XXX	30	45	60
Fecal Coliform (CFU/100 ml)		Wkly Avg				
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	XXX
				Geo Mean		
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2000	XXX	XXX
				Geo Mean		

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

<i>Parameters</i>	<i>Mass (lbs)</i>		<i>Concentration (mg/l)</i>		
	<i>Monthly</i>	<i>Annual</i>	<i>Minimum</i>	<i>Monthly Average</i>	<i>Maximum</i>
Ammonia—N	Report	Report	XXX	Report	XXX
Kjeldahl—N	Report	XXX	XXX	Report	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	Report	XXX
Total Nitrogen	Report	Report	XXX	Report	XXX
Total Phosphorus	Report	Report	XXX	Report	XXX
Net Total Nitrogen (Interim)	Report	Report	XXX	XXX	XXX
Net Total Nitrogen (Final)	Report	7,488	XXX	XXX	XXX
Net Total Phosphorus (Interim)	Report	Report	XXX	XXX	XXX

<i>Parameters</i>	<i>Mass (lbs)</i>		<i>Concentration (mg/l)</i>		
	<i>Monthly</i>	<i>Annual</i>	<i>Minimum</i>	<i>Monthly Average</i>	<i>Maximum</i>
Net Total Phosphorus (Final)	Report	998	XXX	XXX	XXX

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is not in effect.

PA0261548, Industrial Waste, SIC Code 4911, **BCRD LLC**, 5429 Harding Highway Building 500, Mays Landing, NJ 08330. Facility Name: BCRD Cove Area Digester Martinsburg. This proposed facility is located in North Woodbury Township, **Blair County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated Industrial Waste.

The receiving stream(s), Unnamed Tributary to Plum Creek, is located in State Water Plan watershed 11-A and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.16 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	6.0	XXX	XXX	XXX
Temperature (° F)						
Jan 1-31	XXX	XXX	XXX	XXX	66	XXX
Feb 1-29	XXX	XXX	XXX	XXX	68	XXX
Mar 1 - Sep 30	XXX	XXX	XXX	XXX	105	XXX
Oct 1-31	XXX	XXX	XXX	XXX	90	XXX
Nov 1-30	XXX	XXX	XXX	XXX	71	XXX
Dec 1-31	XXX	XXX	XXX	XXX	62	XXX
CBOD ₅	7	13	XXX	5 Avg Mo	10	12.5
Total Suspended Solids	7	13	XXX	5 Avg Mo	10	12.5
Fecal Coliform (CFU/100 ml)	XXX	XXX	XXX	200 Geo Mean	XXX	XXX
Ammonia-Nitrogen						
May 1 - Oct 31	2.0	4.0	XXX	1.5 Avg Mo	3.0	3.75
Ammonia-Nitrogen						
Nov 1 - Apr 30	6.0	12	XXX	4.5 Avg Mo	9.0	11.23
Total Phosphorus	0.4	0.8	XXX	0.30 Avg Mo	0.60	0.75
Total Nitrogen	9	19	XXX	7 Avg Mo	14	17.5

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

<i>Parameters</i>	<i>Mass (lbs)</i>		<i>Concentration (mg/l)</i>		
	<i>Monthly</i>	<i>Annual</i>	<i>Minimum</i>	<i>Monthly Average</i>	<i>Maximum</i>
Ammonia—N	Report	Report	XXX	Report	XXX
Kjeldahl—N	Report	XXX	XXX	Report	XXX
Nitrate-Nitrite as N	Report	XXX	XXX	Report	XXX
Total Nitrogen	Report	Report	XXX	Report	XXX
Total Phosphorus	Report	Report	XXX	Report	XXX
Net Total Nitrogen	Report	0	XXX	XXX	XXX
Net Total Phosphorus	Report	0	XXX	XXX	XXX

* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department's Trading of Nutrients and

Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is not in effect.

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; 412-442-4000

PA0096881, Sewage, **G&G Mobile Home Sales**, 23 Oakridge Heights Drive, Oakdale, PA 15071.

This application is for renewal of an NPDES permit to discharge treated sewage from Oakridge Heights Mobile Home Park No. 1 STP in North Fayette Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Drainage Swale to Unnamed Tributary of North Branch Robinson Run, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply, and recreation. The first downstream potable water supply intake from this facility is the: West View Borough Municipal Water Authority on the Ohio River.

Outfall 001: existing discharge, design flow of 0.00588 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instant. Maximum
CBOD ₅	25			50
Suspended Solids	30			60
Fecal Coliform				
May 1 to Sep 30	200/100 ml as a geometric mean			
Oct 1 to Apr 30	2,000/100 ml 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.

PA0254339, Sewage, SIC Code 4900, **Alexander Shuppe**, PO Box 218, Dillner, PA 15327. Facility Name: Dunkard Valley Commons STP. This proposed facility is located in Dunkard Township, **Greene County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated Sewage.

The receiving stream(s), Unnamed Tributary of Dunkard Creek, is located in State Water Plan watershed 19-G and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0092 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	Instant. Maximum
Flow (MGD)	0.0092	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.02	XXX	0.05
CBOD ₅	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200	XXX	1000
				Geo Mean		
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2000	XXX	10000
				Geo Mean		
Ammonia-Nitrogen						
May 1 - Oct 31	XXX	XXX	XXX	2.0	XXX	4.0
Ammonia-Nitrogen						
Nov 1 - Apr 30	XXX	XXX	XXX	3.0	XXX	6.0

The EPA Waiver is in effect.

PA0092550, Sewage, SIC Code 4952, **Bradys Bend Township Water & Sewer Authority**, 697 State Route 68, East Brady, PA 16028. Facility Name: Bradys Bend Sewage Treatment Plant. This existing facility is located in Bradys Bend Township, **Armstrong County**.

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

The receiving stream(s), Sugar Creek, is located in State Water Plan watershed 17-C and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.05 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Instant. Maximum</i>
Flow (MGD)	0.05	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine	XXX	XXX	XXX	1.4	XXX	3.3
CBOD ₅	10.4	XXX	XXX	25	XXX	50
Total Suspended Solids	12.5	XXX	XXX	30	XXX	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	1,000
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2,000 Geo Mean	XXX	10,000
Ammonia-Nitrogen						
May 1 - Oct 31	6.7	XXX	XXX	16.0	XXX	32.0
Ammonia-Nitrogen						
Nov 1 - Apr 30	10.4	XXX	XXX	25.0	XXX	50.0

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 412-442-4000.

The EPA Waiver is in effect.

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

PA0026271, Sewage, SIC Code 4952, **Meadville Area Sewer Authority Crawford County**, 1320 Park Avenue, Meadville, PA 16335-3114. Facility Name: Meadville Area STP. This existing facility is located in Meadville City, **Crawford County**.

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

The receiving stream, French Creek, is located in State Water Plan watershed 16-D and is classified for warm water fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 7.5 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Instant. Maximum</i>
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
CBOD ₅						
May 1 - Oct 31	1251	1877	XXX	20	30	40
CBOD ₅						
Nov 1 - Apr 30	1564	2502	XXX	25	40	50
Total Suspended Solids	1877	2815	XXX	30	45	60
Fecal Coliform (CFU/100 ml)						
May 1 - Sep 30	XXX	XXX	XXX	200 Geo Mean	XXX	XXX
Fecal Coliform (CFU/100 ml)						
Oct 1 - Apr 30	XXX	XXX	XXX	2000 Geo Mean	XXX	XXX
Ammonia-Nitrogen						
May 1 - Oct 31	469	XXX	XXX	7.5	XXX	15
Ammonia-Nitrogen						
Nov 1 - Apr 30	1407	XXX	XXX	22.5	XXX	45
Total Phosphorus	125	XXX	XXX	2	XXX	4

The proposed effluent limits for Outfall 007 are based on a design flow of N/A MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Weekly Average</i>	<i>Instant. Maximum</i>

The discharge(s) shall consist of uncontaminated stormwater runoff from the treatment plant site.

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

- Federal Pretreatment Program
- Whole Effluent Toxicity testing for the permit renewal
- Stormwater Best Management Practices
- Sanitary Sewer Overflows

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 814-332-6340.

The EPA Waiver is not in effect.

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

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

WQM Permit No. 2294401, Amendment 10-1, Sewerage, **West Hanover Township Water & Sewer Authority**, 7901 Jonestown Road, Harrisburg, PA 17112.

This proposed facility is located in West Hanover Township, **Dauphin County**.

Description of Proposed Action/Activity: Seeking permit approval for upgrades of the existing wastewater treatment facility for nutrient removal.

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

WQM Permit No. WQG02151010, Sewerage, **Kendal Crosslands Communities**, P. O. Box 100, Lititz, PA 19348.

This proposed facility is located in Kennett Township, **Chester County**.

Description of Action/Activity: Construction and operation of a sanitary sewer system, 2 new pumping stations and a 3" force main.

IV. NPDES Applications for Stormwater Discharges from MS4

V. Applications for NPDES Waiver Stormwater Discharges from 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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI01 151039	Hammell-ODonnell Properties 125 Lewis Mill Road Honey Brook, PA 19344	Chester	West Nantmeal and West Brandywine Townships	Indian Run (HQ-CWF)
PAI01 151041	Collin and Virginia McNeil 1701 Horseshoe Trail Chester Springs, PA 19425	Chester	West Pikeland Township	Pickering Creek (HQ-TSF-MF)
PAI01 151042	Charles E. Cardile 540 Church Road Avondale, PA 19311	Chester	New Garden Township	Unnamed Tributary East Branch White Clay Creek (EV)
PAI01 231003	YMCA of Philadelphia 2000 Market Street Philadelphia, PA 19103-3214	Delaware	Haverford Township	Cobbs Creek (WWF-MF)
PAI01 461003	Township of Lower Merion Parks and Recreation 75 East Lancaster Avenue Ardmore, PA 19003	Montgomery	Lower Merion Township	Schuylkill River (WWF)
PAI01 511009	JERC Partners XII, LP 171 State Route 173, Ste 201 Asbury, NJ 08802	Philadelphia	City of Philadelphia	Unnamed Tributary Pennypack Creek/Pennypack Creek (TSF-MF)

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

Lehigh County Conservation District: Lehigh Ag Ctr. Ste. 102, 4184 Dorney Park Road, Allentown, PA 18104, 610-391-9583.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI023910013	Joseph Iudicello The Residuary Trust of Andrew Yastishok 6500 Chapmans Rd. Allentown, PA 18106	Lehigh	Lower Macungie Twp.	Cedar Creek, HQ-CWF
PAI023910011	Mary Yastishok Mark Yastishok Co-Trustee of the Residuary Trust of Andrew Yastishok 6500 Chapmans Rd. Allentown, PA 18106	Lehigh	Lower Macungie Twp.	Little Lehigh Creek, HQ-CWF, MF
PAI023910012	Harold & Ann Dieterly P. O. Box 519 Trumbauersville, PA 18940	Lehigh	Upper Saucon Twp.	Tributary to Saucon Creek (Laurel Run), HQ-CWF, MF

Luzerne County Conservation District: R485 Smith Pond Road, Lehman, PA 18627, 570-674-7991.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI024010005	Piast Home Builders Co. Wlodzimierz Jaskiewicz 12 Jaskiewicz Way White Haven, Pa 18661	Luzerne	Rice Twp.	Big Wapwallopen Creek, HQ-CWF

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI032805001-R	Mark Flohr Flohr Pools 1350 Lincoln Way East Chambersburg, PA 17202	Franklin	Guilford Township	Falling Spring/HQ-CWF
PAI030610010	Fiorino Grande Grande Land, LP 2213 Quarry Road West Lawn, PA 19609	Berks	Sinking Spring Borough	Cacoosing Creek/CWF-MF

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

Centre County Conservation District: 414 Holmes Avenue, Suite 4, Bellefonte, PA 16823, (814) 355-6817

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI041410008	John Kelly Gray's Woods Professional Development, LLC 428 Windmere Dr, Ste 200 State College, PA 16801	Centre	Patton Township	UNT to Buffalo Run HQ-CWF
PAI041410009	Chris Summers Copper Beech Townhome Communities Nineteen, LLC 2590 Park Center Blvd., Ste 200 State College, PA 16801	Centre	Benner Township	UNT to Buffalo Run HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI041710003	PA DCNR Moshannon Forest District #9 3372 State Park Rd. Penfield, PA 15849	Clearfield	Lawrence & Pine Townships	Anderson Creek, Laurel Run, Lick Run & Trout Run HQ-CWFs

Clinton County Conservation District: 45 Cooperation Lane, Mill Hall, PA 17751, (570) 726-3798

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI041810003	Gas Field Specialists 2107 SR 44 S Shinglehouse, PA 16748	Clinton	Dunnstable Township	Big Plum Run CWF

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

The following permit listed below was incorrectly published as an Individual Permit Action and is being republished as an Application.

Allegheny County Conservation District, Lexington Technology Park, Building 1, Suite 102, 400 North Lexington Avenue, Pittsburgh, PA 15208 (412-241-7645)

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI050210003	McKeesport Area School District 3590 O'Neil Blvd. McKeesport, PA 15132	Allegheny	White Oak Borough	Long Run (TSF) Jacks Run (HQ)

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

Butler County Conservation District, 122 McCure Drive, Butler PA 16001-6501

Jefferson County Conservation District, 1514 Route 28, Brookville PA 15825

<i>NPDES Application No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI 0610 10 003	Brett Neupert 210 Neupert Road Cabot PA 16023	Butler	Jefferson Twp	Sarver Run HQ-TSF
PAI 0633 10 001	Brookville Area School District 104 Jenks Street Brookville PA 15825	Jefferson	Brookville Borough	UNT North Fork HQ-CWF

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

PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

STATE CONSERVATION COMMISSION

NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NPDES PERMITS FOR CAFOs

The State Conservation Commission has taken the following actions on previously received applications for nutrient management plans under 3 Pa.C.S. Chapter 5, for agricultural operations that have or anticipate submitting applications for new, amended or renewed NPDES permits or NOIs for coverage under a general permit for CAFOs under 25 Pa. Code Chapter 92a. This notice is provided in accordance with 25 Pa. Code Chapter 92a and 40 CFR Part 122, implementing The Clean Streams Law and the Federal Clean Water Act.

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

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

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

NUTRIENT MANAGEMENT PLAN—PUBLIC NOTICE SPREADSHEET

<i>Agricultural Operation Name and Address</i>	<i>County</i>	<i>Total Acres</i>	<i>Animal Equivalent Units</i>	<i>Animal Type</i>	<i>Special Protection Waters (HQ or EV or NA)</i>	<i>Renewal/New</i>
Dream Farms 13689 Dream Highway Newburg, PA 17240	Franklin	340.7	2295	heifer	NA	Renewal
Aspen-Perry 2127 Oak Hall Rd. Newport, PA 17074	Perry	85.9	1865	swine	HQ CWF	Renewal
Country View Family Farm, LLC Beaverton Sow Farm 429 Beaverton Lane Beavertown, PA 17813	Snyder	100.00 But 0 for manure App.	790.93	Swine	N/A	Application Renewal

PUBLIC WATER SUPPLY (PWS)
PERMITS

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for PWS permits to construct or substantially modify public water systems.

Persons wishing to comment on permit applications are invited to submit statements to the office listed before the application within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding an application. A comment should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability that require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act

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

Application No. 4610519 Public Water Supply

Applicant	Aqua Pennsylvania, Inc.
Township	Perkiomen
County	Montgomery

Responsible Official	Mr. Marc Lucca 762 West Lancaster Avenue Bryn Mawr, PA 19010
Type of Facility	PWS
Consulting Engineer	C.E.T. Engineering Services 1240 North Mountain Road Harrisburg, PA 17112
Application Received Date	July 20, 2010
Description of Action	Replacement of well pump at Rahns Well No.

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

Application No. 5410507, Public Water Supply.

Applicant	Schuylkill Haven Borough
[Township or Borough]	South Manheim Township Schuylkill County
Responsible Official	Scott J. Graver, Boro Administrator 12 West Main Street Schuylkill Haven, PA 17972
Type of Facility	Community Water System
Consulting Engineer	Robert J. Weir, PE Entech Engineering, Inc. 4 South Fourth Street P. O. Box 32 Reading, PA 19603 610-373-6667
Application Received Date	November 16, 2010
Description of Action	Application for the removal of Hydrofluosilic Acid (fluoride) treatment at the Schuylkill Haven/ Tumbling Ru Water Treatment Plant

Application No. 6410507, Public Water Supply.

Applicant	Country Trails Country Store
[Township or Borough]	South Canaan Township Wayne County
Responsible Official	Robert Grimm, Owner P. O. Box 146 South Canaan, PA 18454

Type of Facility Transient Non-Community Water System
 Consulting Engineer Janet R. McNally, PE
 William F. Hill & Associates, Inc.
 207 Baltimore Street
 Gettysburg, PA 17325
 717-334-9137
 Application Received November 17, 2010
 Date
 Description of Action Application for the addition of nitrate treatment on the transient, noncommunity water system serving Country Trails General Store.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

Permit No. 0610532, Public Water Supply.

Applicant **Shinn Spring Water Company**
 Municipality Cumru Township
 County **Berks**
 Responsible Official Bryan Shinn, Vice President
 2 East Pointe Drive
 Birdsboro, PA 19508
 Type of Facility Public Water Supply
 Consulting Engineer Edward J. Walsh, P.E.
 McCarthy Engineering Associates
 1121 Snyder Road
 West Lawn, PA 19609
 Application Received: 10/25/2010
 Description of Action Project includes expanding of the existing bottle water facility including the addition of another RO unit, finished water storage tank and becoming a bulk water hauler.

Application No. 3610543 MA, Minor Amendment, Public Water Supply.

Applicant **Denver Borough**
 Municipality Denver Borough
 County **Lancaster**
 Responsible Official Michael Hession, Borough Manager
 501 Main Street
 Denver, PA 17517
 Type of Facility Public Water Supply
 Consulting Engineer Farley F Fry, P.E.
 Hanover Engineering Associates, Inc.
 20-C Snyder Lane
 Ephrata, PA 17522-9101
 Application Received: 11/17/2010
 Description of Action Corrosion Chemical Change

Application No. 3610544 MA, Minor Amendment, Public Water Supply.

Applicant **Northwestern Lancaster County Authority**
 Municipality Penn Township

County **Lancaster**
 Responsible Official David Stewart PE, Chairman
 97 North Penryn Road
 Manheim, PA 17545
 Type of Facility Public Water Supply
 Consulting Engineer Mark L Homan, P.E.
 Becker Engineering LLC
 111 Millersville Road
 Lancaster, PA 17603
 Application Received: 11/22/2010
 Description of Action Chlorine Booster Station for Fruitville Pike Extension

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

Permit No. 6510504, Public Water Supply.

Applicant **Municipal Authority of the City of New Kensington**
 PO Box 577
 920 Barnes Street
 New Kensington, PA 15068
 [Township or Borough] City of New Kensington
 Responsible Official James Matta, General Manager
 Municipal Authority of the City of New Kensington
 PO Box 577
 920 Barnes Street
 New Kensington, PA 15068
 Type of Facility Water treatment plant
 Consulting Engineer Gibson-Thomas Engineering Co., Inc.
 1004 Ligonier Street
 PO Box 853
 Latrobe, PA 15650
 Application Received November 22, 2010
 Date
 Description of Action Addition of Nalclear 8181 polymer as a filter aid.

Permit No. 0410517, Public Water Supply.

Applicant **Midland Borough Municipal Authority**
 946 Railroad Avenue
 Midland, PA 15059
 [Township or Borough] Midland Borough
 Responsible Official Raymond Presutti, Authority Board Chairman
 Midland Borough Municipal Authority
 946 Railroad Avenue
 Midland, PA 15059
 Type of Facility Water treatment plant
 Consulting Engineer Widmer Engineering, Inc.
 806 Lincoln Place
 Beaver Falls, PA 15010
 Application Received November 18, 2010
 Date
 Description of Action Rehabilitation of the filters at the water treatment plant.

MINOR AMENDMENT

Applications Received under the Pennsylvania Safe Drinking Water Act

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

Application No. 5410506MA

Applicant **Tamaqua Area Water Auth.**
 [Township or Borough] Rush Township
Schuylkill County
 Responsible Official Brian A. Connely, Authority Chairman
 Tamaqua Area Water Authority
 320 East Broad Street
 Tamaqua, PA 18252
 Type of Facility Community Water System
 Consulting Engineer Dale R. Glatfelter, PE
 Gannett Fleming, Inc.
 P. O. Box 67100
 Harrisburg, PA 17106-7100
 Application Received Date November 15, 2010
 Description of Action Application for replacement of the existing granular filter media at the Still Creek Water Treatment Plant.

Application No. 5210510MA

Applicant **Hemlock Farms Community Association**
 [Township or Borough] Blooming Grove Township
Pike County
 Responsible Official Robert Vandercar, Dir. of Pub. Works
 1007 Hemlock Farms
 Lords Valley, PA 18428
 Type of Facility Community Water System
 Consulting Engineer Douglas Berg, PE
 Entech Engineering, Inc.
 4 South Fourth Street
 Reading, PA 19603
 610-373-6667
 Application Received Date October 27, 2010
 Description of Action Application for construction of additional chlorine contact piping to meet 4-log deactivation of viruses at the Hemlock Farms, Well No. 4 facility.

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

Application No. 0410516GWR, Minor Amendment.

Applicant **Industry Borough Municipal Authority**
 PO Box 259
 Industry, PA 15052

[Township or Borough] Industry Borough
 Responsible Official Industry Borough Municipal Authority
 PO Box 259
 Industry, PA 15052
 Type of Facility Water treatment system
 Consulting Engineer Michael Baker Jr., Inc.
 4301 Dutch Ridge Road
 Beaver, PA 15009
 Application Received Date November 18, 2010
 Description of Action Demonstration of 4-log treatment for groundwater sources
Application No. 0410515GWR, Minor Amendment.
 Applicant **Vanport Township Municipal Authority**
 285 River Avenue
 Vanport, PA 15009
 [Township or Borough] Vanport Township
 Responsible Official David Brooks, Superintendent
 Vanport Township Municipal Authority
 285 River Avenue
 Vanport, PA 15009
 Type of Facility Water treatment system
 Consulting Engineer
 Application Received Date November 18, 2010
 Description of Action Demonstration of 4-log treatment for groundwater sources
Application No. 2610512MA, Minor Amendment.
 Applicant **The Municipal Authority of the Township of Washington,**
 1390 Fayette Avenue,
 Belle Vernon, PA 15012
 [Township or Borough] Washington Township
 Responsible Official Joseph Alvarez III, Plant Manager
 The Municipal Authority of the Township of Washington,
 1390 Fayette Avenue,
 Belle Vernon, PA 15012
 Type of Facility Water treatment system
 Consulting Engineer Bankson Engineers, Inc.
 267 Blue Run Road
 PO Box 200
 Indianola, PA 15051
 Application Received Date November 29, 2010
 Description of Action Construction of an interconnection between the Municipal Authority of the Township of Washington and the Municipal Authority of Westmoreland County.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—6026.907)

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P.S. §§ 6026.302—6026.305) require the Department to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. A person intending to use the background standard, Statewide health standard, the site-specific standard or intend to remediate a site as a special industrial area shall file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one or a combination of cleanup standards or receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the following site, proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified as follows. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office listed before the notice. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

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

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

Okula Property, 2 Deibert Drive, Jackson Township, **Monroe County**. Wesley P. Fitchett, Brinkerhoff Environmental Services, Inc., 133 Jackson Road, Suite D, Medford, NJ 08055 has submitted a Notice of Intent to Remediate (on behalf of his client, Anna Okula, 2 Deibert Drive, Stroudsburg, PA 18360), concerning the remediation of soil found to have been impacted by kerosene as a result of a release from a kerosene aboveground storage tank. The applicant proposes to remediate the site to meet the Residential Statewide Health Standard for soil. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future.

Pfizer Pigments, 8751 Paint Mill Road, Washington Township, **Lehigh County**. William B. Gilchrist, Roux Associates, Inc., 1222 Forest Parkway, Suite 190, West Deptford, NJ 08066 has submitted a Notice of Intent to Remediate (on behalf of his client, Pfizer, Inc., 100 Route 206 North, Peapack, NJ 07977), concerning the remediation of soil found to have been impacted by VOCs, Inorganics, and benzo(a)pyrene as a result of historical operations at this pigment manufacturing facility. The applicant proposes to remediate the site to meet the Residential Statewide Health Standard and the Site-Specific Standard for soil. In the future, the site may be developed for recreational usage, and possibly include a gravel parking lot, for nearby hiking trails, the adjacent proposed rails-to-trails path and the adjacent Lehigh County canoe/kayak ramp. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future.

Freeman Property, Lot 5E-6E East Shore Drive, Crescent Lake, Auburn Township, **Susquehanna County**. Dawn Washo, Resource Environmental Management, Inc., 36 Taylor Lane, Montrose, PA 18801 has submitted a Notice of Intent to Remediate (on behalf of her client, William Freeman, 1256 Horsham Road, Ambler, PA 19002-1008), concerning the remediation of soil found to have been impacted by No. 2 fuel oil as a result of a release from an aboveground storage tank. The applicant proposes to remediate the site to meet the Residential Statewide Health Standard for soil. The site will remain residential. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future.

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

Northgate Car Park, Lancaster City, **Lancaster County**. Reliance Environmental, Inc., 130 East Chestnut Street, Lancaster, PA 17602, on behalf of Berger Real Estate, 2452 Marietta Avenue, Lancaster, PA 17601, submitted a Notice of Intent to Remediate site soils contaminated with hydrocarbons from unregulated underground storage tanks and hydraulic lifts. The site will be remediated to the Residential Statewide Health standard, and future use will be commercial.

Thomas Anderson Residence/Leffler Energy, Inc., Hopewell Township, **York County**. Patriot Environmental Management, LLC, PO Box 629, Douglassville, PA 19518, on behalf of Thomas Anderson, 15271 Barrens Road, Stewartstown, PA 17363 and Leffler Energy, Inc., 15 Mount Joy Road, PO Box 302, Mount Joy, PA 17552, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with No. 2 fuel oil released from a ruptured aboveground storage tank. The site,

which will remain residential, will be remediated to the Residential Statewide Health standard.

L. B. Marks Leasing Company, North Lebanon Township, **Lebanon County**. Liberty Environmental, Inc., 50 North 5th Street, Fifth Floor, Reading, PA 19601, on behalf of L. B. Marks Leasing Company, 1720 Grace Avenue, Lebanon, PA 17046, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with No. 2 fuel oil from an underground storage tank. This commercial facility will be remediated to a combination of Residential Statewide Health and Site-Specific standards.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, Pa 15222-4745

Donora Ind Park, Parcels 11-B, 11-C, 11-D, and 3-A, Donora Borough, **Washington County**. Civil and Environmental Consultants, Inc., 4000 Triangle Lane, Suite 200, Export PA 15632 on behalf of The Redevelopment Authority of the County of Washington, 1100 West Beau Street, Suite 603, Washington, PA 15301 has submitted a Notice of Intent to Remediate. The 12.5 acre parcels are part of the former 265 acre US Steel—American Steel and Wire Donora Plant. Heavy metals from historic uses and gasoline constituents from an upgradient source will be evaluated. The intended future use of the property will be as a commercial / industrial property.

RESIDUAL WASTE GENERAL PERMITS

Application(s) 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 Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

General Permit Application No. WMGR123SW001. Shallenberger Construction, Inc., 195 Enterprise Lane, Connellsville PA 15425-6617. Ronco, 2326 McClellandtown Road, Masontown, PA 15461-2568. An application for a residual waste permit for an industrial wastewater treatment facility for processing of drilling fluids, raw gas well flow back and produced water generated during hydraulic fracturing and extraction of natural gas from Marcellus Shale geologic formations, for beneficial reuse at the well site in Masontown Borough, **Fayette County**. The application was received by the Regional Office on November 22, 2010.

Comments concerning the application should be directed to Diane McDaniel, Environmental Engineering Manager, Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745. Persons interested in obtaining more information about the general permit application may contact the DEP Southwest Regional Office at 412-442-4000. TDD users may contact the Department through the Pennsylvania Relay service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

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; the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.20a). Mining activity permits issued in response to applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4014); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1002).

The following permit applications to conduct mining activities have been received by the Department. A copy of an application is available for inspection at the district mining office indicated before each application. Notices of requests for 401 Water Quality Certifications are included in individual application notices, as noted.

Written comments or objections, or requests for an informal conference or a public hearing, as applicable, on a mining permit application may be submitted by a person or an officer or head of Federal, state or local government agency or authority to the Department at the address of the district mining office indicated before each application within 30 days of this publication or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Written comments or objections regarding a mining permit application should contain the name, address and telephone number of 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.

A request for an informal conference or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code § 77.123 or § 86.34, must contain the name, address and telephone number of the requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

When an NPDES number is listed, the mining activity permit application was accompanied by an application for an individual NPDES permit. The Department has made a tentative determination to issue the NPDES permit in conjunction with the mining activity permit, but the issuance of the NPDES permit is contingent upon the approval of the associated mining activity permit.

For coal mining activities, NPDES permits, when issued, will contain effluent limits that do not exceed the technology-based effluent limitations. The proposed limits are listed in Table 1.

For noncoal mining activities, the proposed limits are in Table 2. Discharges from noncoal mines located in some geologic settings (for example, in coal fields) may require additional effluent limits. If additional effluent limits are needed for an NPDES permit associated with a noncoal mining permit, then the permit description specifies the parameters. The limits will be in the ranges specified in Table 1.

More restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining that may occur will be incorporated into an NPDES permit when necessary for compliance with water quality standards and antidegradation requirements (in accordance with 25 Pa. Code Chapters 91—96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are in Technical Guidance Document 362-0600-001, NPDES Program Implementation-Memorandum of Understanding (MOU) Concerning Water Quality Management, NPDES Program Implementation, and Related Matters. Other specific factors to be considered include public comments and Total Maximum Daily Loads.

Persons wishing to comment on NPDES permit applications should submit statements to the Department at the address of the district mining office indicated before each application within 30 days of this public notice. Comments received within the comment period will be considered in the final determinations regarding the NPDES permit applications. A comment must include the name, address and telephone number of the writer and a concise

statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests or petitions for a public hearing on NPDES permit applications as provided in 25 Pa. Code § 92.61. The request or petition for a public hearing shall be filed within 30 days of this public notice and contain the name, address, telephone number and the interest of the party filing the request and state the reasons why a hearing is warranted. A public hearing may be held if the Department considers the public interest significant. If a hearing is scheduled, a notice of the hearing on the NPDES permit application will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. When a public hearing is held, the Department will consider comments from the public hearing in the final determination on the NPDES permit application.

Coal Applications Received

Effluent Limit—The following range of effluent limits will apply to NPDES permits issued in conjunction with the associated coal mining activity permit and, in some cases, noncoal mining permits:

<i>Parameter</i>	<i>Table 1</i>		
	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (total)	1.5 to 3.0 mg/l	3.0 to 6.0 mg/l	3.5 to 7.0 mg/l
Manganese (total)	1.0 to 2.0 mg/l	2.0 to 4.0 mg/l	2.5 to 5.0 mg/l
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Aluminum (Total)	0.75 to 2.0 mg/l	1.5 to 4.0 mg/l	2.0 to 5.0 mg/l
pH ¹		greater than 6.0; less than 9.0	
Alkalinity greater than acidity ¹			

¹ The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas; active areas disturbed by coal refuse disposal activities; and mined areas backfilled and revegetated; and 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 Office: 25 Technology Drive, Coal Center, PA 15423, 724-769-1100

17941601 and NPDES Permit # PA0215708, Forcey Coal, Inc., (P. O. Box 225, Madera, PA 16661), to renew the permit for the Tipple Operation in Bigler Township, **Clearfield County** and related NPDES permit. No additional discharges. Application received: September 2, 2010.

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

32040106 and NPDES No. PA0249653. Ridge Limestone, Inc., 1094 Lantz Road, Avonmore, PA 15618-1241, permit renewal for the continued operation and restoration of a bituminous surface and auger mine in Young Township, **Indiana County**, affecting 339.0 acres. Receiving stream(s): unnamed tributaries to/and Whiskey Run to Blacklegs Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: November 8, 2010.

32990104 and NPDES No. PA02350509. ABM Mining Company, Inc., 3330 Johnston Road, Smicksburg, PA 16256, revision of an existing bituminous surface mine to increase the total permit acres from 112.0 to 118.7 acres, to add 5.8 acres of Lower Freeport Coal (3.4 acres surface/2.4 acres auger), add auger mining to the permit, stream encroachment for a variance to cross UNT No. 4 to Little Mahoning Creek, land use change from forestland to cropland in Grant Township, **Indiana County**, affecting 112.0 acres. Receiving stream(s): unnamed tributaries to Little Mahoning Creek classified for the following use(s): high quality cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: November 3, 2010.

07000101 and NPDES No. PA0248843. Cooney Brothers Coal Company, P. O. Box 246, Cresson, PA 16630, permit renewal for reclamation only of a bituminous surface mine in Logan Township, **Blair County**, affecting 31.0 acres. Receiving stream(s): Kittanning Run classified for the following use(s): cold water fishery. The first downstream potable water supply intake from the point of discharge is Altoona City Authority—Kittanning Point Reservoir. Application received: November 9, 2010.

11773037 and NPDES No. PA0069159. Cooney Brothers Coal Company, P. O. Box 246, Cresson, PA 16630, permit renewal for the continued operation and restoration of a bituminous surface and auger mine in Conemaugh Township, **Cambria County**, affecting 358.7 acres. Receiving stream(s): unnamed tributaries to/and Little Conemaugh River classified for the following use(s):

cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: November 9, 2010.

56050108 and NPDES No. PA0249874. Hoffman Mining, Inc., 118 Runway Road, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface and auger mine in Paint Township, **Somerset County**, affecting 247.9 acres. Receiving stream(s): Shade Creek and unnamed tributaries to/and Spruce Run classified for the following use(s): cold water fishery. The first downstream potable water supply intake from the point of discharge is Border Dam of Cambria/Somerset Authority. There are no potable water supply intakes within 10 miles downstream. Application received: November 16, 2010.

56950105 and NPDES No. PA0213136. Marquise Mining Corporation, 3889 Menoher Boulevard, Johnstown, PA 15905, permit renewal for the continued operation and restoration of a bituminous surface mine in Stonycreek Township, **Somerset County**, affecting 245.0 acres. Receiving stream(s): unnamed tributaries to Wells Creek and unnamed tribs to Stonycreek classified for the following use(s): cold water fishery. The first downstream potable water supply intake from the point of discharge is Hooversville Municipal Authority. Application received: November 16, 2010.

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

33950107 and NPDES Permit No. PA0227102. Cookport Coal Co., Inc. (425 Market Street, Kittanning, PA 16201) Renewal of an existing bituminous surface strip, and shale and clay removal operation in Warsaw Township, **Jefferson County** affecting 39.5 acres. Receiving streams: Two unnamed tributaries of Mill Creek to Sandy Lick Creek to Redbank Creek to the Clarion River, classified for the following: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: November 19, 2010.

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

40840203T2. Blaschak Coal Corp., (P. O. Box 12, Mahanoy City, PA 17948), transfer of an existing anthracite coal refuse reprocessing and surface mine operation from Mammoth Anthracite, LLC in Hazle Township, **Luzerne County** affecting 80.0 acres (formerly 101.0 acres), receiving stream: Nescopeck Creek. Application received: November 2, 2010.

40930102T3. Glenn O. Hawbaker, Inc., (1952 Waddle Road, State College, PA 16803), transfer from Mammoth Anthracite, LLC and boundary correction of an existing anthracite surface mine, coal refuse reprocessing and preparation operation in Hazle Township, **Luzerne County** affecting 688.0 acres (formerly 492.0 acres), receiving stream: Nescopeck Creek. Application received: November 2, 2010.

49663004R5. Reading Anthracite Company, (P. O. Box 1200, Pottsville, PA 17901), renewal of an existing anthracite surface mine operation in Zerbe and West Cameron Townships, **Northumberland County** affecting 2222.0 acres, receiving stream: none. Application received: November 15, 2010.

48850701R5. Reading Anthracite Company, (P. O. Box 1200, Pottsville, PA 17901), renewal of an existing anthracite coal refuse disposal operation in Coal Township, **Northumberland County** affecting 29.8 acres, receiving stream: none. Application received: November 15, 2010.

40663024R5. Coal Contractors (1991), Inc., (P. O. Box 39, Hazleton, PA 18201), renewal of an existing anthracite surface mine operation in Hazle Township, **Luzerne County** affecting 925.0 acres, receiving stream: none. Application received: November 23, 2010.

Noncoal Applications Received

Effluent Limits—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

<i>Parameter</i>	<i>Table 2</i>		
	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Alkalinity exceeding acidity* pH*		greater than 6.0; less than 9.0	

* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500

26102802. Mon River Energy Corp. (P. O. Box 466, Brier Hill, PA 15415). Application for commencement, operation and reclamation of small noncoal surface mine, located in Redstone Township, **Fayette County**, affecting

.97 acre. Receiving stream: Fourmile Run, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received: November 16, 2010.

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

58100303 and NPDES Permit No. PA0224871. Popple Construction, Inc., (215 East Saylor Avenue, Wilkes-Barre, PA 18702), commencement, operation and restoration of a quarry operation in Rush Township, **Susquehanna County** affecting 249.08 acres, receiving stream: North Branch Wyalusing Creek, classified for the following use: cold water fishes and migratory fishes. Application received: November 22, 2010.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department. Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the Commonwealth to certify that the involved projects will not violate the sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA, the issuance of a Dam Permit or Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment shall submit comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before an application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on working days at the office noted before the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications Received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and Requests for Certification under section 401(a) of the FWPCA.

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, Telephone 570-826-2511.

E35-431. Reich-Thomas Realty, 79 Lincoln Avenue, Carbondale, PA 18407, in Clifton Township, **Lackawanna County**, U.S. Army Corps of Engineers, Philadelphia District.

To remove the existing structure and to construct and maintain a road crossing of Tamarack Creek (HQ-CWF) consisting of a 20' × 5' precast concrete box culvert with grouted R-7 rock aprons. The project is located within Vision Quest Camp located on the west side of Keystone Road approximately 0.15 mile north of its intersection with SR 0435. (Thornhurst, PA Quadrangle, Latitude: 41°14'13.7"; Longitude: -75°30'18.3").

E35-432. Matthew F. Paris, 633 White Birch Road, South Abington Township, PA, in South Abington Township, **Lackawanna County**, U.S. Army Corps of Engineers, Baltimore District.

To fill 0.04 acre of PSS wetlands within the Leggetts Creek Watershed. This application is for an after-the-fact

permit for fill placed previously with permitting. The project is located at 633 White Birch Road. (Dalton/Scranton, PA Quadrangle, Latitude: 41°30'1.1"; Longitude: -75°40'45.1").

E52-224. Columbia Gas Transmission, LLC, 1700 MaqCorkle Avenue SE, Charleston, WV 25314, in Delaware Township, Dingman Township, Milford Township & Westfall Township, **Pike County**, U.S. Army Corps of Engineers, Philadelphia District.

To construct and maintain the following water obstructions and encroachments associated with the replacement of approximately 11.4 miles of a natural gas transmission pipeline (Line 1278). The project is located in Delaware, Dingmans, Milford and Westfall Townships, Pike County. It begins along Weber Road in Dingmans Township (Edgemere, PA Quadrangle Latitude: 41° 17' 4.9"; Longitude: -74° 52' 40.7") and ends in Millrift along the Delaware River in Westfall Township (Port Jervis North, NY-PA Quadrangle Latitude: 41° 24' 26.5", Longitude: -74° 44' 35.8").

1. (SPA-DJC-001) a 20-inch diameter pipeline crossing of an UNT to Raymondskill Creek (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

2. (SPA-DJC-002) a 20-inch diameter pipeline crossing of Raymondskill Creek (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

3. (SPA-DJC-008) a 20-inch diameter pipeline crossing of an UNT to Raymondskill Creek (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

4. (SPA-DJC-007) a 20-inch diameter pipeline crossing of an UNT to Raymondskill Creek (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

5. (SPA-DJC-003) a 20-inch diameter pipeline crossing of an UNT to Swale Brook (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

6. (SPA-DJC-009) a 20-inch diameter pipeline crossing of Swale Brook (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

7. (SPA-DJC-010) a 20-inch diameter pipeline crossing of Sloat Brook (EV, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

8. (SPA-DJC-011) a 20-inch diameter pipeline crossing of an UNT to Sloat Brook (EV, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

9. (SPA-DJC-013) a 20-inch diameter pipeline crossing of an UNT to Sawkill Creek (EV, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

10. (SPA-DJC-012) a 20-inch diameter pipeline crossing of an UNT to Sawkill Creek (EV, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

11. (SPA-BMC-001) a 20-inch diameter pipeline crossing of Sawkill Creek (EV, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

12. (SPA-BMC-002) a 20-inch diameter pipeline crossing of an UNT to Vantine Brook (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

13. (SPA-BMC-003) a 20-inch diameter pipeline crossing of an Vandermark Creek (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

14. (SPA-DJC-014) a 20-inch diameter pipeline crossing of an UNT to Cummins Creek (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

15. (SPA-DJC-017) a 20-inch diameter pipeline crossing of an UNT to Bush Kill Creek (EV, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

16. (SPA-BMC-005) a 20-inch diameter pipeline crossing of an UNT to Bush Kill Creek (EV, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

17. (SPA-DJC-015) Dual 10-inch diameter pipeline crossing of an UNT to the Delaware River (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

18. (SPA-BMC-003) Access Road Crossing of Vandermark Creek (HQ-CWF, MF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

19. (SPA-DJC-016) Access Road Crossing of an UNT to the Delaware River (HQ-CWF) (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

20. (WPA-DJC-001) a 20-inch diameter pipeline crossing of 34 feet of wetlands, temporarily impacting 0.04 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

21. (WPA-DJC-002) a 20-inch diameter pipeline crossing of 263 feet of wetlands, temporarily impacting 0.38 acres of PEM wetlands and 0.05 acre of PFO wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

22. (WPA-DJC-003) a 20-inch diameter pipeline crossing of 177 feet of wetlands, temporarily impacting 0.13 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

23. (WPA-DJC-004) a 20-inch diameter pipeline crossing of 45 feet of wetlands, temporarily impacting 0.04 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

24. (WPA-DJC-013) a 20-inch diameter pipeline crossing of 272 feet of wetlands, temporarily impacting 0.33 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

25. (WPA-DJC-008) a 20-inch diameter pipeline crossing of 503 feet of wetlands, temporarily impacting 0.33 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

26. (WPA-DJC-005) a 20-inch diameter pipeline crossing of 69 feet of wetlands, permanently impacting 0.03 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

27. (WPA-DJC-006) a 20-inch diameter pipeline crossing of 52 feet of wetlands, permanently impacting 0.02 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

28. (WPA-DJC-007) a 20-inch diameter pipeline crossing of 361 feet of wetlands, temporarily impacting 0.25 acres of PEM wetlands and 0.06 acre of PFO wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

29. (WPA-DJC-009) a 20-inch diameter pipeline crossing of 109 feet of wetlands, temporarily impacting 0.10 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

30. (WPA-DJC-010) a 20-inch diameter pipeline crossing of 109 feet of wetlands, temporarily impacting 0.05 acres of PEM wetlands and 0.16 acre of PFO wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

31. (WPA-DJC-011) a 20-inch diameter pipeline crossing of 0 feet of wetlands, temporarily impacting 0.02 acre of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

32. (WPA-DJC-012) a 20-inch diameter pipeline crossing of 16 feet of wetlands, temporarily impacting 0.03 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

33. (WPA-BMC-004) a 20-inch diameter pipeline crossing of 63 feet of wetlands, temporarily impacting 0.07 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

34. (WPA-BMC-003) a 20-inch diameter pipeline crossing of 0 feet of wetlands, permanently impacting 0.04 acres of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

35. (WPA-BMC-001) a 20-inch diameter pipeline crossing of 291 feet of wetlands, temporarily impacting 0.41 acre of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

36. (WPA-BMC-002) a 20-inch diameter pipeline crossing of 232 feet of wetlands, permanently impacting 0.10 acre of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

37. (WPA-DJC-015) a 20-inch diameter pipeline crossing of 0 feet of wetlands, permanently impacting 0.03 acre of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

38. (WPA-DJC-016) a 20-inch diameter pipeline crossing of 120 feet of wetlands, temporarily impacting 0.07 acre of PEM wetlands and 0.01 acre of PFO wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

39. (WPA-DJC-018) a 20-inch diameter pipeline crossing of 74 feet of wetlands, temporarily impacting 0.10 acre of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

40. (WPA-DJC-019) a 20-inch diameter pipeline crossing of 0 feet of wetlands, temporarily impacting 0.02 acre of PEM wetlands and 0.01 acre of PFO wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

41. (WPA-DJC-023) a 20-inch diameter pipeline crossing of 434 feet of wetlands, temporarily impacting 0.31 acre of PEM wetlands and 0.31 acre of PFO wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

42. (WPA-DJC-020) a 20-inch diameter pipeline crossing of 55 feet of wetlands, temporarily impacting 0.05 acre of PEM wetlands and 0.01 acre of PFO wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

43. (WPA-DJC-021) a 20-inch diameter pipeline crossing of 0 feet of wetlands, temporarily impacting 0.01 acre of PSS wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

44. (WPA-DJC-014) Access Road Crossing of 172 feet of wetlands, permanently impacting 0.10 acre of PEM wetlands (Latitude: 41° xx' xx"; Longitude: -74° xx' xx")

The project will temporarily impact 3.07 acres of wetlands (2.73/PEM and 0.34/PFF) permanently impact 0.60 acres of wetlands (0.22 /PEM, 0.37/PFF and 0.01/PSS).

Southcentral Region: Watershed Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone: 717-705-4707.

E22-569: Pennsylvania State Employees Federal Credit Union, 1 Credit Union Place, Harrisburg, PA 17110, Susquehanna Township, **Dauphin County**, ACOE Baltimore District

To construct and maintain a 17.0-foot long, 48.0-inch culvert pipe extension to an existing culvert across Elmerton Avenue in an unnamed tributary to Asylum Run (WWF) impacting 0.02-acres of PEM wetlands, and an 88.0-foot long, 36.0-inch culvert pipe in an unnamed tributary to Asylum Run (WWF) all for the purpose of improving access to a proposed commercial development area located near the intersection of Elmerton Avenue and Kohn Road (Harrisburg East, PA Quadrangle, N: 16.97 inches, W: 32.07 inches: Latitude: 40° 17' 44.6", Longitude: 76° 51' 53.2") in Susquehanna Township, Dauphin County.

E21-419: Boyd E. Diller, Inc., Attn: Peggy Porter, 6820 Wertzville Road, Enola, PA 17025-1032, Holding Pond Closure, Hampden and Silver Spring Townships, **Cumberland County**, ACOE Baltimore District

To remove an existing tan bark mulching operation holding pond and to convert the area into a rain garden facility. The project is located in the Sears Run (WWF, MF) watershed approximately 1000 feet north of the intersection of Hunter Drive and Wertzville Road (S.R. 0944) (Wertzville, PA Quadrangle, N: 7.0 inches, W: 1.8 inches; Latitude: 40° 17' 26", Longitude: -77° 0' 44") in Hampden and Silver Spring Townships, Cumberland County. The purpose of the project is for the stabilization of the existing site.

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636

E17-465. Eagle Environmental II, L.P., 354 Alexander Spring Road-Suite 3, Carlisle, PA 17105. Harmony Residual Waste Landfill and Leachate Transmission Line, Chest Township, **Clearfield County**, ACOE Baltimore District (Westover, PA Quadrangle Latitude: 40° 45' 52.97"; Longitude: 78° 37' 58.21").

Eagle Environmental II L.P. proposes to construct, operate and maintain a residual waste landfill and leachate transmission line requiring wetland impacts for the landfill and two leachate transmission line crossings beneath Chest Creek and a wetland associated to an unnamed tributary to Chest Creek. Pine Run, contributory watercourses and water-bodies are designated as Exceptional Value through Chapter 93 Rules and Regulations. Chest Creek and the unnamed tributary are designated as Cold Water Fishery through Chapter 93. Construction of the residual waste landfill will result in 0.17-acres of permanent isolated wetland impacts. Construction of the leachate transmission line shall be completed by directional drilling beneath the Chest Creek and open trenching through wetlands that resulting in

temporary floodplain impacts for boring launch and wetland impacts for the trenching. The applicant has proposed constructing 0.42-acres of replacement wetlands for mitigation of the 0.17-acre isolated wetland impacts incurred for construction of the landfill. The project is located along the northeastern right-of-way of SR 3006 approximately 4500-feet northwest of SR 3003 and SR 3006 intersection.

E49-314. Delaware Township Municipal Authority, PO Box 80, Dewart, PA 17730. Northern Neighbors Sewer Improvements Project, in Delaware Township, Watson-town Borough, **Northumberland County**, ACOE Baltimore District (Milton, PA Quadrangle Latitude: 41-3-1.56; Longitude: 76-51-7.37 to the Center of the project)

The applicant proposes to construct, operate and maintain a sanitary sewer line with a total of 6 Stream Crossings. All crossings are intended to be directional drilling or aerial crossings. The six crossings are as follows: Crossing 1, Dry Run, Warm Water Fishery, North end of Watsonstown; Crossing 2, Spring/Tannery Run, Warm Water Fishery, North end of Watsonstown; Crossing 3, Unnamed Tributary to the W. Branch of the Susquehanna River, Warm Water Fishery, South end of Watsonstown adjacent to the existing Watsonstown Treatment Plant; Crossing 4, Warrior Run, Warm Water Fishery, South end of Watsonstown; Crossing 5, Muddy Run, Warm Water Fishery, Just east of SR 0080 and North of SR 0405; Crossing 6, Limestone Run, Warm Water Fishery, North end of Milton. This is a linear project that extends from the Waste Water Treatment Plant in Dewart along the SR 0405 corridor extending to the Milton Regional Sewer Authority (MRSA) plant in Milton. This project does not intend on impacting any wetlands either temporarily or permanently.

ENVIRONMENTAL ASSESSMENTS

Cambria District: Environmental Program Manager, 286 Industrial Pk Rd, Ebensburg, PA 15931-4119.

EA1609-002. Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation, Cambria Office, 286 Industrial Park Rd., Ebensburg, PA 15931. Abandoned Mine Land Reclamation Project, in Perry Township, **Clarion County**, Pittsburgh ACOE District.

The applicant proposes to backfill an abandoned surface mine, which includes a total of 1,000 linear feet of dangerous highwall. The project will include the backfilling of a 1.3 acre open waterbody that has developed within the open surface mine pit. (Parker Quadrangle N: 5.75 inches, W: 15.5 inches).

ACTIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and NOIs for coverage under General Permits. This notice of final action is provided in accordance with 25 Pa. Code Chapters 91 and 92a and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P.S. §§ 691.1—691.101) and the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1376).

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

Sections I—VI contain actions regarding industrial, animal or sewage wastes discharges, discharges to groundwater, and discharges associated with MS4, stormwater associated with construction activities and CAFOs. Section VII contains notices for parties who have submitted NOIs for Coverage under General NPDES Permits. The approval for coverage under these General NPDES Permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions in each General Permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions in the respective permit. The permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

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

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

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

I. NPDES Renewal Permit Actions

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0083488 (Sew)	Stonebridge Health and Rehab Center 102 Chandra Drive Duncannon, PA 17020	Perry County Penn Township	UNT to Sherman Creek / 7-A	Y
PA0084026 (Sew)	Northwestern Lancaster County Authority 97 N. Penryn Road Manheim, PA 17545-9326	Lancaster County Penn Township	Chickies Creek / 7-G	Y
PA0085677 (IW)	Harley-Davidson Motor Company Operations, Inc. (Groundwater Cleanup) 1425 Eden Road York, PA 17402	York County Springettsbury Township	Codorus Creek / 7-H	Y

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N</i>
PA0252620 Industrial Waste	West Carroll Township Water & Sewer Authority PO Box 328 Elmora, PA 15737	Cambria County West Carroll Township	UNT of Fox Run	Y
PA0218367 Industrial Waste	Saint Francis University PO Box 600 Loretto, PA 15940-0600	Cambria County Loretto Borough	UNT to Chest Creek	Y

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N</i>
PA0217905 Industrial Waste	Municipal Authority of the Borough of Oakmont PO Box 73 721 Allegheny Avenue Oakmont, PA 15139	Allegheny County Oakmont Borough	Falling Spring Run (Outfall 001) and Allegheny River (Outfalls 002 through 009)	Y
<i>Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481</i>				
<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0030724 (Sewage)	Pleasant Ridge Manor West 8300 W. Ridge Road Girard, PA 16417-8701	Erie County Fairview Township	Trout Run (15)	Y
PA0238881 (Sewage)	Joel E. Brown SFTF 9089 Old Waterford Road Erie, PA 16509	Erie County Greene Township	Unnamed Tributary of Walnut Creek (15-A)	Y
PA0239551 (Sewage)	Camping Association of Presbyteries of NW PA 263 Big Bend Road Mercer, PA 16137	Venango County Scrubgrass Township	Little Scrubgrass Creek (16-G)	Y

II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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

NPDES Permit No. PA0058769, Industrial Waste, **Wawa Inc.**, 260 W. Baltimore Pike, Wawa, PA 19063-5699.

This proposed facility is located in Middletown Township, **Delaware County**.

Description of Proposed Action/Activity: Approval for the renewal of an NPDES Permit to discharge treated groundwater from a groundwater remediation system a facility known Wawa Food Market No. 133 Unnamed Tributary to Rocky Run in Watershed 3-G.

NPDES Permit No. PA0058939, Industrial Waste, **JDM Materials Company**, 851 County Line Road, Huntingdon Valley, PA 19006.

This proposed facility is located in Schuylkill Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal of an NPDES Permit to discharge stormwater from a Ready-Mix Concrete Batch Plant property to the Unnamed Tributary to French Creek in Watershed 3D.

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

NPDES Permit No. PA0009733, Industrial Waste, **Exelon Generations Company, LLC**, Peach Bottom Nuclear Power Plant, 1848 Lay Road, Delta, PA 17314.

This proposed facility is located in Peach Bottom Township, **York County**.

Description of Proposed Action/Activity: Authorization to discharge to Susquehanna River in Watershed 7-I.

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

NPDES Permit No. PA0239780, Sewage, **Greene Township**, 9333 Tate Road, Erie, PA 16509.

This proposed facility is located in Greene Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of a new NPDES permit for new discharge of treated sewage.

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

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

WQM Permit No. 3810402, Sewage, **Borough of Palmyra**, 325 South Railroad Street, Suite 3, Palmyra, PA 17078-2400.

This proposed facility is located in Palmyra Borough, **Lebanon County**.

Description of Proposed Action/Activity: Permit approval for the construction and modification of sewerage facilities consisting of an upgrade of the Palmyra Borough's Main Pumping Station as well as demolition and construction of Palmyra Borough's Pumping Station Nos. 1 and 2. Additionally, use of the existing equalization basin and aeration tanks for wet weather flow storage upon completion of and connection to the new North Londonderry Township Authority WWTP.

WQM Permit No. 3604201 Amendment 10-1, Industrial Waste, **Frey Brothers Manufacturing, Inc.**, 372 Puseyville Road, Quarryville, PA 17566.

This proposed facility is located in East Drumore Township and Little Britain Township, **Lancaster County**.

Description of Proposed Action/Activity: Permit amendment approving the modification/operation of industrial wastewater facilities consisting of eight monitoring wells and one spring for the purpose of monitoring the three Residual Waste Storage Impoundments.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

WQM Permit No. 2609201, Industrial Waste, **Masontown Municipal Authority**, 2 Court Street, Masontown, PA 15461

This proposed facility is located in Masontown Borough, **Fayette County**

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a 142,000 gallon concrete filter backwash holding tank and a precast concrete manhole.

WQM Permit No. 6510406, Sewerage, **Derry Township Municipal Authority**, PO Box 250, New Derry, PA 15671

This proposed facility is located in Derry Township, **Westmoreland County**

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a 0.0154 mgd sewage treatment plant, two (2) pumping stations, force main and gravity sewers.

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

WQM Permit No. 2595201, Industrial Waste, **Amendment No. 1, PA Electric Company**, 2800 Pottsville Pike, Reading, PA 19612-6001

This proposed facility is located in Harborcreek Township, **Erie County**.

Description of Proposed Action/Activity: Issuance of a permit amendment to upgrade leachate collection pumps and controls, replace chemical storage tank and metering system, improve piping network between facilities, install rotary fan sludge press and install a new sludge holding tank.

WQM Permit No. WQG018765, Sewerage, **Amendment No. 1, David A. Jenkins**, 103 Colt Lane, Warren, PA 16365

This proposed facility is located in Glade Township, **Warren County**.

Description of Proposed Action/Activity: Relocation of the sand filter for a Single Residence Small Flow Treatment Facility.

WQM Permit No. 2510402, Sewerage, **Erie Sewer Authority, c/o Knox, McLaughlin, Gornall & Sennett, P.C.**, 120 West 10th Street, Erie, PA 16501-1461

This proposed facility is located in City of Erie, **Erie County**.

Description of Proposed Action/Activity: This project involves replacing the Erie Wastewater Treatment Plan's main low-pressure air blowers and related systems.

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

WQM Permit No. 1501418, Sewerage, **Ponds Edge Homeowners Association**, P. O. Box 1119, Chadds Ford, PA 19317.

This proposed facility is located in Pennsbury Township, **Chester County**.

Description of Action/Activity: Renewal of existing wastewater treatment plant with a seepage bed disposal.

WQM Permit No. 1503410, Sewerage, **Renewal, Little Washington Wastewater Company**, 762 West Lancaster Avenue, Bryn Mawr, Pa 19010-3489.

This proposed facility is located in Newlin Township, **Chester County**.

Description of Action/Activity: Renewal of existing wastewater treatment plant.

WQM Permit No. 5110401, Sewerage, **School District of Philadelphia**, 440 North Broad Street, Philadelphia, PA 19130.

This proposed facility is located in the City of Philadelphia, **Philadelphia County**.

Description of Action/Activity: New storm water collection, management system and replacement of the existing septic system with a new drip irrigation sanitary system.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

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

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI01 0909007	HMH Limited Partners 374 Easton Road Warrington, PA 18976	Bucks	Springfield Township	Cooks Creek (EV)

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAI01 1503093-R	Toll Brothers, Inc./ Orleans Homebuilders, Inc. 1180 Station Boulevard Chester Springs, PA 19425	Chester	Upper Uwchlan Township	Pickering Creek (HQ-TSF-MF)
PAI01 1505075-R	Southdown Properties, Inc. 55 Country Club Dr, Ste 200 Downingtown, PA 19335	Chester	Caln Township	Unnamed Tributary Valley Creek (CWF)
PAI01 151005	Honey Brook Properties, 69 Risbon Road Honey Brook, PA 19344	Chester	Honey Brook Township	West Branch Brandywine Creek (HQ-TSF)

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water / Use</i>
PAS10H053RR-1	Darren Spotts S&A Homes, Inc. 2121 Old Gatesburg Road, Suite 200 State College, PA 16801	Cumberland	South Middleton Township	Letort Spring Run/EV-MF
PAI030610007	Bruce Rhoads LBBS Properties Pa, LP 1308 Parkside Drive South Wyomissing, PA 19610	Berks	Cumru Township	UNT to Wyomissing Creek-Schuylkill River/HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision in 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Small Flow Treatment Facilities
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

General Permit Type—PAG-02

Facility Location:

<i>Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water / Use</i>	<i>Contact Office & Phone No.</i>
Doylestown Township Bucks County	PAG0200 091059	New Apostolic Church 287 West Sandy Ridge Road Doylestown, PA 18940	Tributary Neshaminy Creek (WWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Doylestown Township Bucks County	PAG0200 091063	Zaveta Custom Homes 4030 Skyron Drive, Suite H Doylestown, PA 18940	Houghs Creek (WWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Lower Makefield Township Bucks County	PAG0200 0905045-R	JC McGinn Construction Co PO Box 237 Lahaska, PA 18931	Core Creek (CWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
London Grove Township Chester County	PAG0200 1505086-A1	SPE—Lisacul Construction Co 2109 Bellemead Avenue Havertown, PA 19083	Unnamed Tributary White Clay Creek/East Branch Indian Run (CWF-TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Caln Township Chester County	PAG0200 151035	William and Joanne Anderson 1030 Osborne Road Downingtown, PA 19335	Beaver Creek (CWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
London Grove Township Chester County	PAG0200 151024	London Grove Township 372 Rose Hill Road West Grove, PA 19390	Unnamed Tributary Middle Branch White Clay Creek (TSF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Franconia Township Montgomery County	PAG0200 461071	The Hankin Group 707 Eagleview Boulevard Exton, PA 19341	Indian Creek (WWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Limerick Township Montgomery County	PAG0200 4608162-1	Sanatoga Interchange Assoc, LP 2701 Renaissance Blvd—4th Fl King of Prussia, PA 19406	Sanatoga Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Scranton, Lackawanna Co.	PAG02003510014	PA Dept. of Transportation George Roberts 55 Keystone Industrial Park Dunmore, PA 18512	Leggetts Creek, TSF, MF	Lackawanna Co. Cons. Dist. 570-281-9495
North Whitehall Twp., Washington Twp., Borough of Slatington, Lehigh Co.	PAG02003910009	H. Scott Everett Delaware & Lehigh National Heritage Corridor, Inc. 2750 Hugh Moore Park Dr. Easton, PA 18042	Lehigh River, TSF, MF	Lehigh Co. Cons. Dist. 610-391-9583
Kingston Twp., Luzerne Co.	PAG02004010010	Beverly B. Atherholt 40 Midland Drive Dallas, Pa 18612	UNT to Toby Creek, CWF	Luzerne Co. Cons. Dist. 570-674-7991
Washington Twp., Northampton Co.	PAG02004810005	COLDOT, Inc.: James Dotta 101 Timberland Drive Bangor, PA 18013	Oughoughton Creek, CWF, MF	Northampton Co. Cons. Dist. 610-746-1971
North Manheim Twp., Schuylkill Co.	PAG02005404022(1)	Fiorino Grande Grande Land, L.P. 2213 Quarry road West Lawn, PA 19609	Panther Creek and Beaver Creek, CWF, MF	Schuylkill Co. Cons. Dist. 570-622-3742
Dimock Twp., Susquehanna Co.	PAG02005810003	S.C.C.T.C. School Board William Bush 100 Schoolhouse Rd. Dimock, PA 18816	Unnamed Trib. to White Creek, CWF	Susquehanna Co. Cons. Dist. 570-278-4600

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Upper Saucon Twp., Lehigh Co.	PAG02003904032R	Dennis Benner Epernay Ltd. 2005 City Line Rd. Ste. 2000 Bethlehem, PA 18017	Laurel Run, CWF	Lehigh Co. Cons. Dist. 610-391-9583
Littlestown Borough Adams County	PAG2000110016	Dale Werner Alpha Fire Co. No. 1 40 East King Street Littlestown, PA 17340-1612 -and- Tom Detwiler Kinsley Construction, Inc. 2700 Water Street York, PA 17405	Marsh Creek—Rock Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-334-0636
McSherrystown Borough Adams County	PAG2000110006	Patrick J. Sheaffer 1147 Eichelberger Street Hanover, PA 17331	Plum Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-334-0636
Letterkenny Township Franklin County	PAG2002810022	John VanHorn FCGA 5540 Coffey Avenue Chambersburg, PA 17201	Rocky Springs/TSF	Franklin County Conservation District 185 Franklin Farm Lane Chambersburg, PA 17201 717-264-5499
Berwick Township Oxford Township Conewago Township Adams County Penn Township Hanover Borough York County	PAG2000109009	Steven A. Moore, P.E. Pennsylvania Department of Transportation Engineering District 8-0 2140 Herr Street Harrisburg, PA 17103-6183	UNT to South Branch Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-334-0636
Oxford Township Adams County	PAG2000110001	John J. Burdis Hanover Toyota 1830 Carlisle Pike Hanover, PA 17331 -and- Gerald Richardson, President Hanover Building Systems, Inc. 6929 York Road Abbottstown, PA 17301	UNT to South Branch Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-334-0636
Conewago Township Adams County	PAG2000109003	Joseph A. Myers Joseph A. Myers Building & Development 160 Ram Drive Hanover, PA 17331	South Branch Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-334-0636
Conewago Township Adams County	PAG2000109017	Christine Smith Conewago Resources P. O. Box 407 660 Edgegrove Road Hanover, PA 17331	South Branch Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-334-0636

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Hamiltonban Township Adams County	PAG2000109010	Robert Gordon Hamiltonban Township Board of Supervisors P. O. Box 526 Fairfield, PA 17325	Middle Creek/CWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-334-0636
Mount Pleasant Township Adams County	PAG2000110004	Christine Smith Conewago Resources, LP 660 Edgegrove Road Hanover, PA 17331	UNT to South Branch Conewago Creek-UNT to Swift Run/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-334-0636
Berkwick Township Abbottstown Borough Adams County	PAG2000109016	Joe A. Myers 160 Ram Drive Hanover, PA 17331	Beaver Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Mount Pleasant Township Adams County	PAG2000110003	John Repasky 240 Bender Road Hanover, PA 17331	South Branch Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Cumberland Township Gettysburg Borough Adams County	PAG2000110002	Bob Kirby, Superintendent Gettysburg National Military Park 1195 Baltimore Pike Gettysburg, PA 17325	UNT to Rock Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Reading Township Adams County	PAG2000108011	Alvin Powers Porto Vecchio Properties, LLC 113 Westminster Road, Suite 200 Reisterstown, PA MD 21136	UNT to West Branch Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Germany Township Adams County	PAG2000110010	James Smith Kingsdale Adventure LLC 201 Ulricktown Road Littlestown, PA 17340	Piney Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Hamilton Township Adams County	PAG2000105016-R	Paul D. Burkentine Stoneridge Development 330 Dubs Church Road Hanover, PA 17331	UNT to Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Oxford Township Adams County	PAG2000105023-R	John & Todd Grim Irish Meadows Partners 300 Frederick Street Hanover, PA 17331	UNT to South Branch Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Conewago Township Adams County	PAG2000110011	Dr. Daniel R. Trimmer Conewago Valley School District 130 Berlin Road Hanover, PA 17331	Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Franklin Township Adams County	PAG2000110013	William J. Oyler 400 Pleasant Valley Road Biglerville, PA 17307	UNT to Marsh Creek/CWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Gettysburg Borough Adams County	PAG2000109014	John Spangler Seminary Ridge Historic Preservation Foundation 61 Seminary Ridge Gettysburg, PA 17325	Rock Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Cumberland Township Adams County	PAG2000110005	Todd Williams Cumberland Township Authority 1370 Fairfield Road Gettysburg, PA 17325	UNT to Marsh Creek—Willoughby Run/CWF-WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Oxford Township Adams County	PAG2000105010-R	Randy Test CW Test Builder, Inc. 1235 Abbottstown Pike Hanover, PA 17331	UNT to South Branch Conewago Creek— Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Liberty Township Adams County	PAG2000103030-R	Allen Beckett Brick Point Construction, Inc. 2716 Emmitsburg Road Gettysburg, PA 17325	Marsh Creek—Middle Creek/CWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Gettysburg Borough Adams County	PAG2000110014	Craig Long Gettysburg Hospital 2595 South George Street, Suite 1 York, PA 17403	Stevens Run/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
McSherrystown Borough Adams County	PAG2000110008	Dan Gebhart Thomas Land Investment, LP 180 Airport Road Hanover, PA 17331	Conewago Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Cumberland Township Freedom Township Adams County	PAG2000110007	Tucker Ferguson Pennsylvania Department of Transportation Engineering District 8-0 2140 Herr Street Harrisburg, PA 17103	Marsh Creek/CWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Huntingdon Township Adams County	PAG2000110018	Kevin M. Keefe Pennsylvania Department of Transportation Engineering District 8-0 2140 Herr Street Harrisburg, PA 17103	Bermudian Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Tyrone Township Adams County	PAG2000110017	John Kemp Two Farms, Inc. 3611 Roland Avenue Baltimore, MD 21211	Alloway Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Tyrone Township Adams County	PAG2000110009	Michael J. McCaskey, VP Energy Works Biopower, LLC 71 Old Mill Bottom Road North, Suite 101 Annapolis, MD 21409	Conewago Creek/TSF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Littlestown Borough Adams County	PAG2000110016	Dale Werner Alpha Fire Company No. 1 40 East King Street Littlestown, PA 17340-1612 -and- Tom Detwiler Kinsley Construction, Inc. 2700 Water Street York, PA 17405	Marsh Rock Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
McSherrystown Borough Adams County	PAG2000110006	Patrick J. Sheaffer 1147 Eichelberger Street Hanover, PA 17331	Plum Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Cumberland Township Adams County	PAG2000110015	Michael & Vanessa Robinson 1403 Gridley Lane Silver Spring, MD 20902	UNT to Rock Creek/WWF	Adams County Conservation District 670 Old Harrisburg Road, Suite 201 Gettysburg, PA 17325 717-224-0636
Mifflintown Borough Juniata County	PAG2033410004	Juniata Lumber and Supply Co., Inc. 101 Parker Street Mifflin, PA 17058	Juniata River/WWF	Juniata County Conservation District 146 Stoney Creek Drive, Suite 4 Mifflintown, PA 17059 717-436-8953 ext 5
Thompsontown Borough Delaware Township Juniata County	PAG2033410003	Thompsontown Municipal Authority P. O. Box 154 Thompsontown, PA 17094	Delaware Creek/TSF	Juniata County Conservation District 146 Stoney Creek Drive, Suite 4 Mifflintown, PA 17059 717-436-8953 ext 5
Maidencreek Township Berks County	PAG2000604033-R1	John Majewski DiGiorgio Mushroom Corp. P. O. Box 96 Temple, PA 19560	Willow Creek/CWF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533 610-372-4657
Richmond Township Berks County	PAG2000605072-R	Scott Haines Landis C. Deck & Sons Contractors 316 New Schaefferstown Road Bernville, PA 19506	UNT to Maiden Creek/WWF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533 610-372-4657

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Penn Township Berks County	PAG2000610049	Michael Gallen Mifflin Management Group 833 Wyomissing Road Mohnton, PA 19540	Irish Creek/WWF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533 610-372-4657
Carroll Township York County	PAG2006710009	Michael Gillespie Pennsylvania Department of Transportation Engineering District 8-0 2140 Herr Street Harrisburg, PA 17103	Dogwood Run/CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402-8984 717-840-7430
Hereford Township Berks County	PAG2000610050	James Mack 7180 Pine Tree Road Hereford, PA 18056	Perkiomen Creek/TSF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533 610-372-4657
Hereford Township Berks County	PAG2000610008	Edwin Van Dam Edwin's Greenhouse Construction, Inc. P. O. Box 66 Northampton, PA 18067	UNT to Perkiomen Creek/TSF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533 610-372-4657
Wyomissing Borough Berks County	PAG2000610040	Barbara Reisch Spartan Properties, Inc. 560 Van Reed Road, Suite 206 Wyomissing, PA 19610	Schuylkill River/WWF-MF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533 610-372-4657
Hampden Township Cumberland County	PAG2002110017	Jarl R. Bliss Mid-Atlantic Military Housing Communities, LLC 200 Fairbrook Drive, Suite 101 Herndon, VA 20170	Cedar Run—Yellow Breeches/CWF	Cumberland County Conservation District 310 Allen Road, Suite 301 Carlisle, PA 17013 717-240-7812
Greene County Richhill Township	PAG02003010010	Consol PA Coal Company, LLC 1000 Consol Energy Drive Canonsburg, PA 15317	Crabapple Creek UNT to Crabapple Creek (WWF)	Greene County CD 19 South Washington Street Waynesburg, PA 15370 724-852-5278
Piney Township Clarion County	PAG2101610002	BAMR P. O. Box 8476 Harrisburg, PA 17105-8476	Unnamed Tributary to Piney Creek (CWF)	BAMR P. O. Box 8476 Harrisburg, PA 17105-8476 717-783-1311

General Permit Type—PAG-3

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water/Use*

*Contact Office &
Phone No.*

Bethlehem City Lehigh County	PAR202242	Cera-Met 2175 Avenue C Bethlehem PA 18017	Lehigh River (TSF)	PA DEP Northeast Regional Office 2 Public Square Wilkes Barre, PA 18701-1915 570-826-2511
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*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water / Use*

*Contact Office &
Phone No.*

Lehigh Twp
Northampton
County

PAR802253

First Student, Inc.
600 Vine St.
Cincinnati OH 45202

UNT to Lehigh River
(CWF)

PA DEP Northeast
Regional Office
2 Public Square
Wilkes Barre, PA
18701-1915
570-826-2511

Archbald Boro
Lackawanna
County

PAR802241

General Dynamics
Land Systems
175 East Street
Eynon PA 18403

Wildcat Creek
(CWF, MF)

PA DEP Northeast
Regional Office
2 Public Square
Wilkes Barre, PA
18701-1915
570-826-2511

Cumberland
County /
Hampden
Township

PAR123543

Land O'Lakes
Purina Feed, LLC
475 S. John's Church
Road
Camp Hill, PA 17011

UNT to Cedar Creek /
CWF / 7E

DEP—SCRO—WQ
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4707

Lancaster County /
West Earl Township

PAR803554

American LaFrance, LLC
68 Cocalico Creek Road
Ephrata, PA 17522

Cocalico Creek / WWF /
7J

DEP—SCRO—WQ
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4707

Franklin County /
Southampton
Township

PAR123551

Wenger's Feed Mill, Inc.
101 West Harrisburg
Avenue
Rheems, PA 17570-0026

UNT to Furnace Run /
CWF / 7B

DEP—SCRO—WQ
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4707

General Permit Type—PAG-7

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

Site Name & Location

*Contact Office &
Phone No.*

East Donegal
Township
Lancaster County

PAG073511

Mount Joy
Borough Authority
PO Box 25
Mount Joy, PA 17552

Mount Joy Borough
Sewage Treatment Plant
159 S. Jacob Street
Mount Joy, PA 17552

DEP—SCRO
909 Elmerton Avenue
Harrisburg, PA
17110-8200
717-705-4707

General Permit Type—PAG-10

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water / Use*

*Contact Office &
Phone No.*

Clifford Township
Susquehanna
County

PAG102216

Tennessee Gas
Pipeline Company
(Compressor Station 321)
1001 Louisiana Street
Houston, TX 77002

Idlewild Creek—4-F
CWF

DEP Northeast Regional
Office Water Management
2 Public Square,
Wilkes Barre, PA
18701-1915
570.826.2553

General Permit Type—PAG-12

*Facility Location:
Municipality &
County*

Permit No.

*Applicant Name &
Address*

*Receiving
Water / Use*

*Contact Office &
Phone No.*

Lancaster County /
East Donegal
Township

PAG123632

Robert Shearer Farm
806 Anderson Ferry Road
Mount Joy, PA 17552

UNT Donegal Springs /
TSF / 7G

DEP—SCRO—
Watershed Management
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4802

Lancaster County /
Rapho Township

PAG123695

Hilltop Heritage Farm
2889 Zink Road
Manheim, PA 17545

Back Run / TSF / 7G

DEP—SCRO—
Watershed Management
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4802

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

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

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

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

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act

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

Operations Permit 0910509 issued to **Logan Square Condominium Association**, P. O. Box 106, New Hope, PA 19038

(PWSID# 1091091) Solebury Township, Bucks County on March 15, 2010, for operation of Facilities approved under construction permit # 0908515 for Arsenic Treatment at Logan Square located at Solebury Township, **Bucks County**.

Operations Permit 4610536 issued to: **Andorra Spring Water Company**, 2201 Barron Hill Road, Conshohocken, PA 19428.

(PWSID# 1466020) Whitemarsh Township, Montgomery County on October 4, 2010, for operations Facilities approved under construction permit # 4610528 for operations to Two Additional BWV-100 Water Vending Machines at Andorra Springs located at Whitemarsh Township, **Montgomery County**.

Operations Permit 0910517 issued to: **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA

(PWSID# 2450086) Bristol Township, Bucks County on June 11, 2010, for 1.8 MG Croydon Tank and Booster Pump Station Modification located Bristol Township, **Bucks County**.

Operations Permit 4610529 issued to: **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010.

(PWSID# 4610529) Abington Township, Montgomery County on August 03, 2010, for operation Facilities approved under construction permit # 4610529 for Solar Bee Mixer at the Hillside 10 MG Storage Tank. Located at Abington Township, **Montgomery County**.

Operations Permit 2310506 issued to: **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010.

(PWSID# 2310506) Nether Providence Township, Delaware County on March 25, 2010, for operations Facilities approved under construction permit # 2310506 for operations to Delta Flocc 801 (Polyaluminum Chloride) at Crum Creek WTP located at Nether Providence Township, **Delaware County**.

Operations Permit 0910536 issued to: **Borough of Quakertown** 35 North Third Street, Quakertown, PA 18951

(PWSID# 1090082) Borough of Quakertown, Bucks County on November 1, 2010, for operations Facilities approved under construction permit # 0910522 for operations Ferric Chloride Injection for Arsenic Removal at Well 11 located at Borough of Quakertown, **Bucks County**.

Operations Permit 2310514 issued to **Aqua Pennsylvania, Inc.**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010

(PWSID# 1460073) Tinicum Township, Delaware County on October 28, 2010, for operation of Facilities approved under construction permit 2310514 for Chiller Unit on the Existing OSGH System located at Tinicum Township, **Delaware County**.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

Source Water Protection Program Approval issued to **The Borough of Akron**, 117 S. Seventh Street, Akron, PA 17501, PWSID 7360128, Akron Borough, **Lancaster County** on November 18, 2010.

Permit No. 5010503, Public Water Supply.

Applicant	Ranch House Restaurant
Municipality	Watts Township
County	Perry
Responsible Official	Thomas Stepp, Owner 133 Old Trail Road Duncannon, PA 17020-7120
Type of Facility	Installation of Corrosion Control Treatment.
Consulting Engineer	Yves Pollart, P.E. RETTEW 5031 Richard Lane Mechanicsburg, PA 17055
Permit to Construct Issued:	11/17/2010
Permit No. 2110507 MA, Minor Amendment , Public Water Supply.	
Applicant	Carlisle Borough
Municipality	Carlisle Borough
County	Cumberland

Responsible Official Peter Selan,
Treatments Plants Manager
Municipal Building
53 W. South Street
Carlisle, PA 17013

Type of Facility Repainting of the Ridge Street
Tank.

Consulting Engineer 1—Not Available

Permit to Construct 11/23/2010
Issued:

Permit No. 6710513 MA, Minor Amendment, Public Water Supply.

Applicant **Shrewsbury Borough**

Municipality Shrewsbury Borough

County **York**

Responsible Official Brian L. Sweitzer,
Superintendent of Pulic Works
35 W Railroad Avenue
Shrewsbury, PA 17361

Type of Facility Install chlorine contact pipe for
Wells PW-1 and PW-2 and 4-log
demonstrations for the entire
system.

Consulting Engineer Charles A Kehew II, P.E.
James R. Holley & Assoc., Inc.
18 South George St.
York, PA 17401

Permit to Construct 11/17/2010
Issued:

Permit No. 3610535, Public Water Supply.

Applicant **Little Britain Mennonite School**

Municipality Little Britain Township

County **Lancaster**

Responsible Official Burnell Nolt,
School Board Chairman
352 Nottingham Road
Quarryville, PA 17566

Type of Facility Installation of softening system,
nitrate treatment system,
sodium hypochlorite disinfection
system and lead and copper
corrosion control facilities.

Consulting Engineer Charles A Kehew II, P.E.
James R. Holley & Assoc., Inc.
18 South George St.
York, PA 17401

Permit to Construct 11/24/2010
Issued:

Permit No. 2210512 MA, Minor Amendment, Public Water Supply.

Applicant **Williamstown Borough Authority**

Municipality Williams Township

County **Dauphin**

Responsible Official Barbara Hart, Chairman
231 Market Street
Newport, PA 17074

Type of Facility Replacement of the clarifier and
pressure filter media.

Consulting Engineer Harry E Bingaman, P.E.
Glance Assoc., Inc.
3705 Trindle Rd.
Camp Hill, PA 17011

Permit to Construct 11/9/2010
Issued:

Permit No. 6710516 MA, Minor Amendment, Public Water Supply.

Applicant **New Life for Girls**

Municipality Conewago Township

County **York**

Responsible Official Rev. Jose L. Pachcco,
President, Executive Director
5925 Lewisberry Road
PO Box 170 (Mailing address)
Dover, PA 17315

Type of Facility Installation of Chlorine Contact
Pipe to achive 4-log treatment of
viruses.

Consulting Engineer David A Brinjac, P.E.
Brinjac, Kambic & Assoc., Inc.
114 N. 2nd St.
Harrisburg, PA 17101

Permit to Construct 11/17/2010
Issued:

Permit No. 2110506, Public Water Supply.

Applicant **Conodoguinet Mobile Estates**

Municipality Lower Mifflin Township

County **Cumberland**

Responsible Official John D Walter, Owner
105 Carlisle Road
Newville, PA 17241

Type of Facility Installation of a 30,000 gallon
storage tank.

Consulting Engineer Charles A Kehew II, P.E.
James R. Holley & Assoc., Inc.
18 South George St.
York, PA 17401

Permit to Construct 11/17/2010
Issued:

Permit No. 0710505 MA, Minor Amendment, Public Water Supply.

Applicant **Roaring Spring Municipal Authority**

Municipality Roaring Spring Borough

County **Blair**

Responsible Official Terry L. Glunt, Chairman
616 Spang Street
Roaring Spring, PA 16673

Type of Facility Demonstration of 4-Log
Treatment of Viruses for GWR.
Installation of 260' of 20" and
235' of 36" contact pipe.

Consulting Engineer Timothy A Cooper, P.E.
Stiffler McGraw & Associates Inc
19 N Juniata Street
Hollidaysburg, PA 16648

Permit to Construct 11/17/2010
Issued:

Permit No. 0610527 MA, Minor Amendment, Public Water Supply.

Applicant **Borough of Shoemakersville**
Municipality Shoemakersville Borough
County **Berks**
Responsible Official Tim Goho, Borough Foreman
115 East 9th Street
Shoemakersville, PA 19555

Type of Facility Demonstration of 4-Log
Treatment of Viruses for GWR.
Installation of approximately 88'
of 14" contact pipe at Entry
Point 101 and approximately 91'
of 18" contact pipe at Entry
Point 102.

Consulting Engineer Bradley D. Smith, P.E.
ARRO Consulting, Inc.
50 Berkshire Court
Wyomissing, PA 19610

Permit to Construct 11/17/2010
Issued:

Operations Permit issued to: **Mifflintown Municipal Authority**, Milford Township, **Juniata County** on 11/15/2010 for the operation of facilities approved under Construction Permit No. 3410505 MA.

Operations Permit issued to: **Path Valley Restaurant**, 7280866, Fannett Township, **Franklin County** on 11/18/2010 for the operation of facilities approved under Construction Permit No. 2810505 MA.

Operations Permit issued to: **Diakon Lutheran Social Ministries**, 3060094, Longswamp Township, **Berks County** on 11/9/2010 for the operation of facilities approved under Construction Permit No. 0610531 MA.

Operations Permit issued to: **Hillandale Gettysburg, LP**, 7011004, Tyrone Township, **Adams County** on 11/24/2010 for the operation of facilities approved under Construction Permit No. 0110501.

Operations Permit issued to: **Dover Township, 7670073, Dover Township, York County** on 11/24/2010 for the operation of facilities approved under Construction Permit No. 6710506 MA.

Operations Permit issued to: **Hillandale Gettysburg LP**, 7010932, Tyrone Township, **Adams County** on 11/24/2010 for the operation of facilities approved under Construction Permit No. 0110507.

Operations Permit issued to: **Quentin Water Company**, 7380031, West Cornwall Township, **Lebanon County** on 11/17/2010 for the operation of facilities approved under Construction Permit No. 3810507.

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

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **Catawissa Borough Municipal Water Authority**

[Township or Borough] Catawissa Borough

County **Columbia**

Responsible Official Ms. Cindy J. Bachman
Catawissa Borough Municipal
Water Authority
19 Schoolhouse Road
P. O. Box 54
Catawissa, PA 17820

Type of Facility Public Water Supply—Operation

Consulting Engineer N/A

Permit Issued Date November 22, 2010

Description of Action 4-log-inactivation of viruses at
Entry Point 100 (Well Nos. 5 &
6), Entry Point 103 (Well No. 9)
and Entry Point 103 (Well Nos. 7
& 8).

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **Herndon Borough Jackson Township Joint Municipal Authority**

[Township or Borough] Herndon Borough

County **Northumberland**

Responsible Official Mr. Andrew Bobb
Herndon Borough
Jackson Township
Joint Municipal Authority
P. O. Box 381
Herndon, PA 17830

Type of Facility Public Water Supply—Operation

Consulting Engineer Chris Beidler, P.E.
Larson Design Group
1000 Commerce Park Drive
Suite 201
Williamsport, PA 17701

Permit Issued Date November 22, 2010

Description of Action 4-log inactivation of viruses at
Entry Point 101 (Well Nos. 1, 2,
3 and 4).

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **Elkland Borough Water System**

[Township or Borough] Elkland Borough

County **Tioga**

Responsible Official Mr. Roy Perry
Elkland Borough
105 Parkhurst Street
Elkland, PA 16920

Type of Facility Public Water Supply—Operation

Consulting Engineer N/A

Permit Issued Date November 22, 2010

Description of Action 4-log inactivation of viruses at
Entry Point 101 (Well Nos. 17
and 24).

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **Lower Mahanoy Township Municipal Authority**
 [Township or Borough] Lower Mahanoy Township
 County **Northumberland**
 Responsible Official Mr. Rick D. Spotts
 Lower Mahanoy Township
 Municipal Authority
 132 River Road
 Dalmatia, PA 17017
 Type of Facility Public Water Supply—Operation
 Consulting Engineer N/A
 Permit Issued Date November 22, 2010
 Description of Action 4-log inactivation of viruses at Entry Point 100 (Well Nos. 1 and 2).

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **Marie Antoinette Inn**
 [Township or Borough] Wyalusing Borough
 County **Bradford**
 Responsible Official Patrick Caine, Owner
 Marie Antoinette Inn
 RR 4, Box 4216
 Wyalusing, PA 18853
 Type of Facility Public Water Supply—Operation
 Consulting Engineer Joseph Stackokus, P.E.
 SM Design Group
 275 Mundy Street
 Wilkes Barre, PA 18702
 Permit Issued Date November 22, 2010
 Description of Action 4-log inactivation of viruses at Entry Point 101 (Well No. 1).

Permit No. Minor Amendment (1791505)—Operation Public Water Supply.

Applicant **Pike Township Municipal Authority**
 [Township or Borough] Pike Township
 County **Clearfield**
 Responsible Official Mr. F. Michael Smeal
 Pike Township
 Municipal Authority
 P. O. Box 27
 Curwensville, PA 16833
 Type of Facility Public Water Supply—Operation
 Consulting Engineer John P. Mazich, P.E.
 Design Engineer Uni-Tec Consulting
 Engineers, Inc.
 2007 Cato Avenue
 State College, PA 16801
 Permit Issued Date November 24, 2010

Description of Action

Operation of (1) replacement Ridge Avenue Pump Station No. 1, which began operation in the winter of 2009, and (2) replacement Ridge Avenue Pump Station No. 2, which began operation on Nov. 16, 2010, to maintain water pressure for about 150 customers of the PTMA public water system.

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

Permit No. 1110505, Public Water Supply.

Applicant **Greater Johnstown Water Authority**
 640 Franklin Street
 PO Box 1407
 Johnstown, PA 15907
 [Borough or Township] West Taylor Township
 County **Cambria**
 Type of Facility Fernwood pump station
 Consulting Engineer Gibson-Thomas
 Engineering Co., Inc.
 1004 Ligonier Street
 PO Box 853
 Latrobe, PA 15650
 Permit to Construct Issued November 18, 2010

Permit No. 1109505, Public Water Supply.

Applicant **Greater Johnstown Water Authority**
 640 Franklin Street
 PO Box 1407
 Johnstown, PA 15907
 [Borough or Township] West Taylor Township
 County **Cambria**
 Type of Facility Saltlick #1 water storage tank mixer
 Consulting Engineer Gibson-Thomas
 Engineering Co., Inc.
 1004 Ligonier Street
 PO Box 853
 Latrobe, PA 15650
 Permit to Construct Issued November 24, 2010

Permit No. 1109506, Public Water Supply.

Applicant **Greater Johnstown Water Authority**
 640 Franklin Street
 PO Box 1407
 Johnstown, PA 15907
 [Borough or Township] West Taylor Township
 County **Cambria**
 Type of Facility Saltlick #2 water storage tank mixer

Consulting Engineer Gibson-Thomas
Engineering Co., Inc.
1004 Ligonier Street
PO Box 853
Latrobe, PA 15650

Permit to Construct November 24, 2010
Issued

Permit No. 0210510, Public Water Supply.

Applicant **Pennsylvania American
Water Company**,
800 West Hersheypark Drive,
Hershey, PA 17033

[Borough or Township] Donegal Township

County **Washington**

Type of Facility DeGarmo pump station

Consulting Engineer

Permit to Construct November 24, 2010
Issued

Permit No. 0210514, Public Water Supply.

Applicant **Pennsylvania American
Water Company**,
800 West Hersheypark Drive,
Hershey, PA 17033

[Borough or Township] Union Township

County **Washington**

Type of Facility Ferric polymer blend at the E.H.
Aldrich water treatment plant

Consulting Engineer

Permit to Construct November 24, 2010
Issued

Permit No. 0210513, Public Water Supply.

Applicant **Pennsylvania American
Water Company**,
800 West Hersheypark Drive,
Hershey, PA 17033

[Borough or Township] City of Pittsburgh and Baldwin
Borough

County **Allegheny**

Type of Facility Ferric polymer blend at the Hays
Mine water treatment plant

Consulting Engineer

Permit to Construct November 24, 2010
Issued

Operations Permit issued to: **The Municipal Authority of the Township of Jenner**, 124 West Street, Jenners, PA 15546, (PWSID #4560017) Jenner Township, **Somerset County** on November 22, 2010 for the operation of facilities approved under Construction Permit # 5604505.

Operations Permit issued to: **The Municipal Authority of the Borough of Oakmont**, PO Box 73, 721 Allegheny Avenue, Oakmont, PA 15139, (PWSID #5020036) Oakmont Borough, **Allegheny County** on November 22, 2010 for the operation of facilities approved under Construction Permit # 0210505MA.

Operations Permit issued to: **Richland Township Municipal Authority**, 2012 Kramer Road, Gibsonia, PA 15044, (PWSID #5020018) Valencia Borough, **Butler**

County on November 24, 2010 for the operation of facilities approved under Construction Permit # 0210509MA.

Operations Permit issued to: **Federal Bureau of Prisons, Federal Corrections Institution at Loretto**, PO Box 1000, Loretto, PA 15940, (PWSID #4110067) Allegheny Township, **Cambria County** on November 24, 2010 for the operation of facilities approved under Construction Permit # 1185504A1.

Permit No. 3204504MA, Minor Amendment. Public Water Supply.

Applicant **Indiana County Municipal
Services Authority**
602 Kolter Drive
Indiana, PA 15701

[Borough or Township] White Township

County **Indiana**

Type of Facility Water supply intake

Consulting Engineer Gibson-Thomas
Engineering Co., Inc.
1004 Ligonier Street
PO Box 853
Latrobe, PA 15650

Permit to Construct November 18, 2010
Issued

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

Operations Permit issued to **Zelienople Borough**, PWSID #5100093, Zelienople Borough, **Butler County** on November 24, 2010. Action is for operation of two (2) new, 1.0 Million Gallon finished water storage tanks and valve vault connecting Zelienople to Beaver Falls Municipal Authority. Operations permit is issued in response to an inspection conducted by department personnel on November 24, 2010, and as approved under Construction Permit No.3007226-MA8, issued on April 9, 2010.

Operations Permit issued to **Bradford City Water Authority**, PWSID #6420014, City of Bradford, **McKean County** on November 24, 2010. Action is for operation of the sludge handling facilities, the potassium permanganate feed system, and the powdered activated carbon feed system, and distribution upgrades. This operations permit is issued in response to an inspection conducted by department personnel on November 15, 2010, and as approved under Construction Permit No.4208501, issued on May 15, 2009.

Operations Permit issued to **Pennsylvania American Water**, PWSID #5100012, Jefferson and Summit Townships, **Butler County** on November 24, 2010. Action is for operation of the 12-inch transmission water line along Saxonburg Road (SR2010). This operations permit is issued in response to an inspection conducted by department personnel on November 15, 2010, and as approved under Construction Permit No.1069502-T1-MA8, issued on April 15, 2010.

Operations Permit issued to **Redbank Valley Municipal Authority (RVMA)**, PWSID #6160010, New Bethlehem Borough, **Clarion County** on November 24, 2010. Action is for operation of the new water treatment plant, storage tank and waterlines. This operations permit is issued in response to an inspection conducted by department personnel on November 16, 2010, and as approved under Construction Permit No.1606502, issued on May 22, 2007.

Interim Operations Permit issued to **Meadville Housing Corporation**, PWSID #6200035, West Mead Township, **Crawford County** on November 23, 2010. Action is for interim operation of the recently installed chlorine contact line while the new hydropneumatic tank is installed. A successful interim operation inspection was conducted by department personnel on November 18, 2010. This interim permit will expire ninety (90) days after issuance, as approved under Construction Permit No.2087501-MA1, issued on July 21, 2010.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)

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

Plan Location:

Borough or Township	Borough or Township Address	County
Waterford Borough	30 South Park Row P. O. Box 486 Waterford, PA 16441	Erie County

Plan Description: The approved plan is for an extension of the existing sanitary sewers to serve 7 existing homes in the area of West 4th Street between Circuit Street and West Street. Approximately 1,255 linear feet of gravity sewer is proposed for West 4th Street, with a connection point at the existing pump station, just north of West 3rd Street.

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

Plan Location:

Borough or Township	Borough or Township Address	County
East St Clair Township	1445 Quaker Valley Road New Paris, PA 15554	Bedford County

Plan Description: The approved plan provides for the upgrade to the Camp Pleasant Pump Station to relieve a hydraulic overload and connection ban. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).

Provisions of Sections 301—308 of the Land Recycling and Environmental Remediation Standards Act (act) (35 P. S. §§ 6026.301—6026.308) require the Department to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in

environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, will also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the environmental cleanup program manager in the Department regional office under which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Northeast Region: Environmental Cleanup Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Silgan Closures, 350 Jaycee Drive, Hazle Township, **Luzerne County**. Randy L. Shuler, ERM, Inc., 250 Phillips Boulevard, Suite 280, Ewing, NJ 08618 has submitted a Final Report (on behalf of his client, Amcor Rigid Plastics—Global, 935 Technology Drive, Suite 100, Ann Arbor, MI 48108-8918), concerning the remediation of soil and groundwater found to have been impacted by VOCs and non-chlorinated solvents as a result of a release from an underground storage tank, which contained xylene. The report was submitted to document attainment of the Statewide Health Standard for soil and groundwater and the Site-Specific Standard for groundwater. A public notice regarding the submission of the Final Report was published in *The Standard Speaker* on October 22, 2010.

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

PSECU Elmerton Avenue Site, Susquehanna Township, **Dauphin County**. CMX Engineering, Inc., 910 Century Drive, Mechanicsburg, PA 17055, on behalf of PA State Employees Credit Union, PO Box 67013, Harrisburg, PA 17106-7013, submitted a Remedial Investigation Report concerning remediation of site soils and groundwater contaminated with arsenic and barium. The site is being remediated to the Site-Specific standard.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

Rockwood Manufacturing Company, Rockwood Borough, **Somerset County**. Cardinal Resources, LLC, 1505 East Carson Street, Pittsburgh, PA 15203 on behalf of Rockwood Manufacturing Company, 300 Main Street, Rockwood, PA 15557-1023 has submitted a Final Report concerning the remediation of site soil and groundwater that may have been contaminated with TCE, previously

used laquers and remnants from former USTs. The Final report was noticed in the *Daily American* on November 5, 2010.

Reichhold Property, Beazer East Bridgeville, Newbury Market, South Fayette Township, Borough of Bridgeville, **Allegheny County**. Civil and Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh PA, 15205 on behalf of Beazer East, Inc. c/o Three Rivers Management, Inc., One Oxford Center, Suite 300, Pittsburgh, PA 15219; Newbury Development LP, 100 Emerson Lane, Suite 1509, Bridgeville PA 15017 and Cytec Industries, 5 Garrett Mountain Plaza, Woodland Park, NJ 07424, has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with xylene, styrene, toluene, naphthalene, maleic anhydride, phthalic anhydride, formaldehyde and vanadium pentoxide. The Final Report intends to document attainment of the site specific standard in area AOE-2. The Final Report was noticed in the *Pittsburgh Post-Gazette* on November 10, 2010.

Firestone Store 38F3, Municipality of Monroeville, **Allegheny County**. Bradburne Briller Johnson, LLC, 5 Market Square, Suite 202, Amesbury, MA 01913 on behalf of BFS Retail Commercial Operations, LLC, 333 East Lake Street, Bloomingdale, IL 60108 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with unleaded gasoline constituents. The Final Report intends to demonstrate attainment of the Statewide Health Standard. The Final Report was noticed in the *Pittsburgh Tribune Review* on October 28, 2010.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.907).

Section 250.8 of 25 Pa. Code and administration of the Land Recycling and Environmental Remediation Standards Act (act) require the Department to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of reuse of the property; and, in some circumstances, a fate

and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the environmental cleanup program manager in the Department regional office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

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

Elizabeth Craver Residence, Manheim Township, **Lancaster County**. Alternative Environmental Solutions, Inc., 480 New Holland Avenue, Suite 8203, Lancaster, PA 17602, on behalf of Elizabeth Craver, 2346 Bob White Lane, Lancaster, PA 17601, submitted a Remedial Investigation and Final Report concerning remediation of site soils and groundwater contaminated with heating oil. The reports demonstrated attainment of a combination of the Residential Statewide Health and Site-Specific standards, and were approved by the Department on November 18, 2010.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701

Rose Ball Residence, Bell Township, **Clearfield County**. Mountain Research, LLC, 825 25th St., Altoona, PA 16601 on behalf of Rose Ball, 2001 Clover Run Road, Mahaffey, PA 15757 has submitted a Final Report concerning remediation of site groundwater contaminated with heating oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on November 19, 2010.

UGI-PNG Williamsport Holder/Regulator Rose St. Station. City of Williamsport, **Lycoming County**. Stantec Consulting Services Inc., 400 Davis Dr., Suite 400, Plymouth Meeting, PA 19462 on behalf of UGI Utilities, Inc., PO Box 12677, Reading, PA 19612-2677 has submitted a Remedial Investigation Report, Cleanup Plan and Final Report concerning remediation of site soil contaminated with lead and benzo(a)pyrene and groundwater contaminated with benzene. The Final Report demonstrated attainment of the Site-specific Standard and was approved by the Department on November 24, 2010.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law; the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.20a). The final action on each application also constitutes action on the NPDES permit application and, if noted, the request for a Section 401 Water Quality Certification. Mining activity permits issued in response to applications will also address the application permitting requirements of the following statutes: the Air Quality Pollution Act (35 P. S. §§ 4001—4014); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1002).

Coal Applications Returned

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

33070108 and NPDES Permit No. PA0258474. Bedrock Mines, LP (111 Freeport Road, Aspinwall, PA 15215) Transfer of an existing bituminous strip operation from Ben Hal Mining Company in McCalmont Township, **Jefferson County** affecting 40.0 acres. Receiving streams: Six unnamed tributaries to Little Sandy Creek. Application received: March 30, 2010. Application Returned: November 22, 2010.

Coal Permits Actions

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

32753702 and NPDES Permit # PA0235849, EME Homer City Generation, LP, (1750 Power Plant Road, Homer City, PA 15748-9558), to renew the permit and to revise the permit for the Homer City Refuse Disposal Facility in Center Township, **Indiana County** to add coal refuse disposal acres, coal refuse disposal support acres, and add an NPDES discharge point for site expansion. In conjunction with this approval, the Department is granting 401 Water Quality Certification certifying that the approved activities will comply with the applicable provisions of sections 301—303, 306, and 307 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341) and will not violate applicable Federal and State water quality standards. Coal Refuse Disposal Support Acres Proposed 21.3, Coal Refuse Disposal Acres Proposed 17.8. Receiving Streams; Conemaugh River, Cherry Run, and Unnamed Tributaries to Cherry Run, classified for the following use: CWF, and Two Lick Creek and Blacklick Creek, classified for the following use: TSF. The first downstream potable water supply intake from the point of discharge is EME Homer City Generation, LP, and intake Two Lick Creek. Application received: April 6, 2009. Permit issued: November 22, 2010.

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

56080105 and NPDES Permit No. PA0262633, Hoffman Mining, Inc., 118 Runway Road, P. O. Box 130, Friedens, PA 15541, revision of an existing bituminous surface mine to add 66.1 acres to the permit area, in Ogle and Paint Townships, **Somerset County**, affecting 221.5

acres. Receiving stream(s): Clear Shade Creek and unnamed tributaries to/and Shade Creek classified for the following use(s): high quality cold water fishery and cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: July 1, 2010. Permit issued: November 15, 2010.

56090103 and NPDES No. PA0262358. Mountaineer Mining Corporation, 1010 Garrett Shortcut Road, Berlin, PA 15530, commencement, operation and restoration of a bituminous surface mine in Brothersvalley Township, **Somerset County**, affecting 58.1 acres. Receiving stream(s): unnamed tributaries to/and Buffalo Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: February 25, 2009. Permit issued: November 24, 2010.

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

40763204R5. Northampton Fuel Supply Co., Inc., (1 Horwith Drive, Northampton, PA 18067), renewal of an existing anthracite coal refuse reprocessing operation in Newport Township, **Luzerne County** affecting 61.2 acres, receiving stream: none. Application received: March 19, 2010. Renewal issued: November 22, 2010.

Noncoal Permits Actions

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

21012801. John W. Nolt, 199 Ridge Road, Newville, PA 17241, bond release on a small noncoal (industrial minerals) operation in North Newton Township, **Cumberland County**, affecting 5.0 acres. Receiving stream(s): unnamed tributary to Green Spring Creek. Application received: January 15, 2010. Bond Released: November 9, 2010.

29890301. K. G. Richards, 810 Lincoln Way East, McConnellsburg, PA 17233, bond release on a large noncoal (industrial minerals) operation in Todd Township, **Fulton County**, affecting 14.0 acres. Receiving stream(s): Licking Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: June 24, 2010. Bond Released: November 9, 2010.

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

16100803. Gary T. Rutkowski (P. O. Box 722, Rimersburg, PA 16248). Commencement, operation, and restoration of a small noncoal shale operation in Porter Township, **Clarion County** affecting 5.0 acres. Receiving streams: None. Application received: May 5, 2010. Permit issued: November 24, 2010.

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

45090801. Floyd DeHaven, Jr., (Route 1, Box 61, Scotrun, PA 18355), commencement, operation and restoration of a quarry operation in Pocono Township, **Monroe County** affecting 5.0 acres, receiving stream: none. Application received: October 5, 2009. Permit issued: November 19, 2010.

54950302C13 and NPDES Permit No. PA0223603. Pennsy Supply, Inc., (P. O. Box 3331, Harrisburg, PA 17104), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Wayne Township, **Schuylkill County**, receiving stream: Bear Creek. Application received: October 6, 2010. Renewal issued: November 29, 2010.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Actions

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

08104024. Doug Wathen, LLC (16208 State Highway 13, Suite 100, Branson West, MO 65737). Blasting for a well pad located in Rome Township, **Bradford County**. Permit issued: November 15, 2010. Permit expires: November 15, 2011.

41104009. Precision Geophysical, Inc. (2695 SR 83 South, Millersburg, OH 44654). Seismic exploration blasting located in McHenry and Cummings Townships, **Lycoming County**. Permit issued: November 12, 2010. Permit expires: September 30, 2011.

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

46104118. American Rock Mechanics, Inc., (7531 Chestnut Street, Zionsville, PA 18092), construction blasting for Country View in Salford Township, **Chester County** with an expiration date of November 12, 2011. Permit issued: November 19, 2010.

46104119. Newville Construction Services, Inc., (408 Mohawk Road, Newville, PA 17241), construction blasting for Franconia Lift Station in Franconia Township, **Montgomery County** with an expiration date of November 15, 2011. Permit issued: November 22, 2010.

38104119. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for Shadow Creek in North Cornwall Township, **Lebanon County** with an expiration date of December 30, 2011. Permit issued: November 23, 2010.

67104117. Maine Drilling & Blasting, (P. O. Box 1140, Gardiner, ME 04345), construction blasting for Brownstone in Dover Township, **York County** with an expiration date of November 15, 2011. Permit issued: November 23, 2010.

67104118. Abel Construction Co., Inc., (P. O. Box 476, Mountville, PA 17554), construction blasting for Russell's Hollow Development in York Township, **York County** with an expiration date of November 17, 2011. Permit issued: November 23, 2010.

36104167. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for The Lakes in Mt. Joy Borough, **Lancaster County** with an expiration date of December 30, 2011. Permit issued: November 24, 2010.

36104168. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for Ervin Zimmerman manure pit in West Earl Township, **Lancaster County** with an expiration date of December 30, 2010. Permit issued: November 24, 2010.

15104003. Explo-Craft, Inc., (P. O. Box 1332, West Chester, PA 19380), construction blasting for Oliver Lot 8 Winfield Road in Easttown Township, **Chester County** with an expiration date of February 28, 2011. Permit issued: November 29, 2010.

58104050. John Brainard, (3978 State Route 2073, Kingsley, PA 18826), construction blasting for the Adams Well Pad in Harford Township, **Susquehanna County** with an expiration date of June 30, 2011. Permit issued: November 29, 2010.

64104007. Northeast Blasting, (403 Middle Creek Road, Honesdale, PA 18431), construction blasting for the Cherry View Estates Sewer Project in Cherry Ridge Township, **Wayne County** with an expiration date of November 11, 2011. Permit issued: November 29, 2010.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

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

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

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

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law and Notice of Final Action for Certification under section 401 of the FWPCA.

Permits, Environmental Assessments and 401 Water Quality Certifications Issued:

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, Telephone 570-826-2511

Denied

E45-510. Liberty Homes Custom Builders, P. O. Box 260, Pocono Lake, PA 18347, in Tobyhanna Township, **Monroe County**, U.S. Army Corps of Engineers, Philadelphia District.

Application for a permit to place fill in 0.06 acre of Exceptional Value, PFO wetlands for the purpose of constructing a single family residential dwelling on Lot 68, Blk. A100, Sec. 4 in the Arrowhead Lakes Residential Community has been denied. The project is located along Lakeshore Drive (Thornhurst, PA Quadrangle, Latitude: 41°9'22.7"; Longitude: -75°34'6.4").

Denied

E45-501. Paul Donofrio, 1420 Ocean Way, Unit 30A, Juniper, FL 33477, in Coolbaugh Township, **Monroe County**, U.S. Army Corps of Engineers, Philadelphia District.

Application for a permit to place fill in 0.13 acre of Exceptional Value, PFO wetlands for the purpose of constructing a single family residential dwelling on Lot 173, in the Camelot Forest Residential Community has been denied. The project is located along Sir Gawain Drive (Blakeslee, PA Quadrangle, Latitude: 41°5'53.7"; Longitude: -75°34'12.7").

Denied

E45-506. Alexander Bitchutsky, 24 South Belair Avenue, Cedar Knolls, NJ 07927, in Coolbaugh Township, **Monroe County**, U.S. Army Corps of Engineers, Philadelphia District.

Application for a permit to place fill in 0.07 acre of Exceptional Value, PFO wetlands for the purpose of constructing a single family residential dwelling on Lot 23, Block A-87, Sec 13 in the Arrowhead Lakes Residential Community has been denied. The project is located along Cresco Drive (Thornhurst, PA Quadrangle, Latitude: 41°9'48"; Longitude: -75°33'38.8").

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636

E41-609. Anadarko E&P Company, L.P., 1201 Lake Robins Drive, The Woodlands, TX 77380. Pine Creek Surface Water Withdrawal (PC-2) Project, McHenry Township, **Lycoming County**, ACOE Baltimore District (Cammal, PA Quadrangle Latitude: 41° 23' 46.28"; Longitude: 77° 27' 29.43").

The applicant proposed to construct, operate and maintain a water intake structure within Pine Creek, an overhead electric conductor across Pine Creek and associated wetlands, and appurtenances within the 100-foot floodway of Pine Creek for surface water withdrawal to support natural gas well development. The water intake shall be constructed to occupy a maximum 800-square feet of public with no obstruction to navigation or limiting of other recreational use. The water intake structure and electric conductor appurtenances within the 100-year floodway shall be limited two utility poles, a six-inch diameter water supply and electrical conduit, an aerial electrical line crossing wetlands, and a 72-inch diameter manhole. The project is located along the western right-of-way of SR 0414 and Pine Creek Rail Trail approximately 0.5-mile north of Truman Run Road and SR 0414 intersection

E49-313. Shamokin-Coal Township Joint Sewer Authority, 114 Bridge Street, Shamokin, PA 17872-7690. Sewer Plant Upgrades, in Ralpho Township, **Northumberland County**, ACOE Baltimore District (Shamokin, PA Quadrangle Latitude: 40-48-54.3; Longitude: 76-35-0.5).

The Shamokin-Coal Township Joint Sewer Authority is proposing to complete upgrades to the existing sewage treatment plant. The upgrades include two new outfalls to Shamokin Creek, which carries a water quality designation of Warm Water Fishery. Additionally, the application proposes to install a discharge line connecting to an existing outfall. This connection will be facilitated by means of a manhole set at grade in the floodplain of Shamokin Creek. This permit also includes 401 Water Quality Certification.

E53-433. Ultra Resources, Inc., 304 Inverness Way South-Suite 295, Englewood, CO 80112-5828. Ultra Resources PL-115 Natural Gas Pipeline and Waterline Development in West Branch Township, **Potter County**, ACOE Baltimore District (Galeton, PA Quadrangle Latitude: 41° 39' 59.07"; Longitude: 77° 37' 08.06").

Ultra Resources, Inc. proposes to construct, operate and maintain its 8-inch diameter PL-115 natural gas pipeline and two 6-inch raw waterlines for the Marshland Play Area gas well development requiring encroachment of the following of two (2) wetlands and two (2) stream crossings:

<i>Permit ID</i>	<i>Activity</i>	<i>Resource</i>	<i>Water Quality</i>	<i>Beginning Project Station</i>	<i>Ending Project Station</i>
Wetland	Pipeline PL-115 Crossing	Wetland	EV	23+41	28+83
Stream	Pipeline PL-115 Crossing	Unnamed Tributary to Sliders Branch	EV	23+61	23+61
Stream	Two Waterline Crossings	Unnamed Tributary to Sliders Branch	EV	23+61	23+61
Wetland	Two Waterline Crossings	Wetland	EV	23+41	28+83
Stream	Pipeline PL-115 Crossing	Sliders Branch	EV	23+76	23+76
Stream	Two Waterline Crossings	Sliders Branch	EV	23+76	23+76

Since the unnamed tributary and Sliders Branch are wild trout fisheries, no construction or future repair work shall be done in or along the stream channel between October 1 and December 31 without prior written approval from the Pennsylvania Fish and Boat Commission. Installation of the gas pipeline shall be accomplished by directional drilling beneath the above listed wetlands and streams. The project is located along the southern right-of-way of Pigeon Hill Road approximately 3265-feet west of South Mitchell Road and Pigeon Hill Road intersection. If upon investigation the Department determines the activities authorized by this permit are serving to degrade or impair the designated water quality of the above listed wetlands or streams, the permittee shall develop the necessary corrective action plan to mitigate the degradation or impairment. The permittee shall submit any corrective action plan to the Northcentral Region Oil and Gas Program for review and approval prior to implementing any corrective action measure.

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E63-625. Washington Investments, LLC, 325 Wiley Street, Morgantown, WV 26505. To construct and maintain fill in floodway in North and South Strabane Townships, **Washington County**, Pittsburgh ACOE District. (Washington East, PA Quadrangle: N: 15.7 inches; W: 9.3 inches; Latitude: 40° 12' 41"; Longitude: 80° 11' 45"). To construct and maintain a CON/SPAN bridge across an unnamed tributary to Chartiers Creek (WWF) having a span of 42 feet and an underclearance of 14 feet. To construct and maintain approximately 840 linear feet retaining wall and fill including chain-link fence in the floodway on both banks of said stream. To construct and maintain various outfall structures to unnamed tributaries to Chartiers Creek. To place fill in approximately 500 linear feet of an unnamed tributary to Chartiers Creek with drainage area less than 100 acres. To construct and maintain an on-site mitigation project by performing bank stabilization and riparian habitat enhancement. The project proposes the development of 14 acres for commercial buildings (Park Place at the Meadows). The site located along SR 19 in North and south Strabane Townships, Washington County.

EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control permits have been issued.

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

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

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

Southwest Region: Oil & Gas Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

09/14/2010

ESCGP-1 No.: ESX10-125-0074

Applicant Name: MarkWest Liberty Midstream & Resources LLC

CONTACT: Robert McHale

Address: 100 Plaza Drive Suite 102

City: Atlasburg State: PA Zip Code: 15004

County: Washington Township(s): Chartiers and Cecil

Receiving Stream(s) and Classifications: Brush Run, Plum Run and UNT to Plum Run, Other

09/22/2010

ESCGP-1 No.: ESX10-125-0059 Major Revision

Applicant Name: MarkWest Liberty Midstream & Resources LLC

Contact Person: Robert McHale

Address: 100 Plaza Drive Suite 102

City: Atlasburg State: PA Zip Code: PA

County: Washington Township(s): Canton

Receiving Stream(s) and Classifications: UNT to Chartiers Creek and UNT to Georges Run, Other

11/12/2010

ESCGP-1 No.: ESX09-125-0060 Major Revision

Applicant Name: Atlas Energy Resources, LLC

Contact Person: Jeremy Hirtz

Address: 800 Mountain View Drive

City: Smithfield State: PA Zip Code: 15478

County: Washington Township(s): West Bethlehem

Receiving Stream(s) and Classifications: Barrs Run and Tensmile Creek, Other

09/29/2010

ESCGP-1 No.: ESX10-059-0076

Applicant Name: CNX Gas Company LLC

Contact Person: Dan Bitz

Address: 200 Evergreene Drive

City: Waynesburg State: PA Zip Code: 15370

County: Greene Township(s): Center/Morris

Receiving Stream(s) and Classifications: South Fork Tenmile Creek, Scott Run, West Run, Patterson Creek (HQ-WWF)

11/15/2010

ESCGP-1 No.: ESX10-051-0047

Applicant Name: Atlas Energy Resources, LLC

Contact Person: Jeremy Hirtz

Address: 800 Mountain View Drive

City: Smithfield State: PA Zip Code: 15478

COUNTY Fayette Township(s): German

Receiving Stream(s) and Classifications: UNTs to Middle Run & Antram Run, Other

Secondary Water: Middle Run and Monongahela River

County: Greene Township(s): Franklin

Receiving Stream(s) and Classifications: South Fork Ten Mile (WWF)/Lower Monongahela, Other

Northcentral Region: Oil & Gas Management Program Manager, 208 West Third Street, Williamsport, PA 17701

ESCGP-1 # ESX10-117-0222

Applicant Name East Resources Management, LLC

Contact Person Jefferson Long
Address 190 Thorn Hill Road
City, State, Zip Warrendale, PA 15086
County Tioga
Township(s) Union Twp.
Receiving Stream(s) and Classification(s) Trib to Towanda
Cr, E. Br. Sugar Works Run, Trib. to Sugar Works Run,
Trib to Lycoming Creek

ESCGP-1 # ESX10-117-0239
Applicant Name East Resources Management, LLC
Contact Person Jefferson Long
Address 190 Thorn Hill Road
City, State, Zip Warrendale, PA 15086
County Tioga
Township(s) Jackson Twp.
Receiving Stream(s) and Classification(s) Harts Creek,
Susquehanna River Basin in PA—Tioga River

ESCGP-1 # ESX10-081-0105
Applicant Name Anadarko E&P Company, LP
Contact Person Bertha Nefe
Address P. O. Box 1330
City, State, Zip Houston, TX 77251
County Lycoming
Township(s) Cascade Twp.
Receiving Stream(s) and Classification(s) Slacks Run and
UNT to Joe Gray Run

ESCGP-1 # ESX10-033-0006
Applicant Name EQT Production Company
Contact Person Todd Klaner
Address 455 Racetrack Road
City, State, Zip Washington, PA 15301
County Clearfield
Township(s) Huston Twp.
Receiving Stream(s) and Classification(s) Wise Run/
Laurel Run, UNT to Anderson Cr, Anderson Cr,
Bennett Br. Sinnemahoning Cr, W. Br. Susquehanna R.

ESCGP-1 # ESX10-081-0059
Applicant Name Range Resources Appalachia, LLC
Contact Person Carla Suskowski
Address 380 Southpoint Blvd
City, State, Zip Canonsburg, PA 15317
County Lycoming
Township(s) Jackson and Cogan House Twps.
Receiving Stream(s) and Classification(s) Schoolhouse
Run; Packhorse Cr; UNT—Packhorse Cr/Trout Run/
Gray's Run; Steam Valley Run; Trout Run

ESCGP-1 # ESX10-081-0107
Applicant Name Chief Gathering, LLC
Contact Person Ted Wurfel
Address 6051 Wallace Road Ext, Ste 210
City, State, Zip Wexford, PA 15090
County Lycoming
Township(s) Jordan Twp.
Receiving Stream(s) and Classification(s) Little Muncy
Creek

ESCGP-1 # ESX10-117-0225
Applicant Name East Resources Management, LLC
Contact Person Jefferson Long
Address 190 Thorn Hill Road
City, State, Zip Warrendale, PA 15086
County Tioga
Township(s) Delmar & Charleston Twps.
Receiving Stream(s) and Classification(s) E Br Stony
Fork; UNTs to E Br Stony Fork/Wilson Creek/
Charleston Cr/Babb Cr/Catlin Hollow; Wilson Cr,
Babb Cr, Charleston Cr

ESCGP-1 # ESX10-117-0241
Applicant Name East Resources Management, LLC

Contact Person Jefferson Long
Address 190 Thorn Hill Road
City, State, Zip Warrendale, PA 15086
County Tioga
Township(s) Middlebury Twp.
Receiving Stream(s) and Classification(s) Elkhorn Creek,
Susquehanna River Basin, Crooked Creek

ESCGP-1 # ESX10-117-0243
Applicant Name East Resources Management, LLC
Contact Person Jefferson Long
Address 190 Thorn Hill Road
City, State, Zip Warrendale, PA 15086
County Tioga
Township(s) Osceola Twp.
Receiving Stream(s) and Classification(s) UNT to
Thornbottom Creek, Tioga River Basin, Cowanesque
River, Tioga River

ESCGP-1 # ESX10-117-0244
Applicant Name East Resources Management, LLC
Contact Person Jefferson Long
Address 190 Thorn Hill Road
City, State, Zip Warrendale, PA 15086
County Tioga
Township(s) Covington Twp.
Receiving Stream(s) and Classification(s) UNT to Marvin
Creek, Susquehanna River Basin in PA, Tioga River

ESCGP-1 # ESX10-117-0242
Applicant Name East Resources Management, LLC
Contact Person Jefferson Long
Address 190 Thorn Hill Road
City, State, Zip Warrendale, PA 15086
County Tioga
Township(s) Charleston Twp.
Receiving Stream(s) and Classification(s) UNT to
Charleston Creek/W. Br. Susquehanna River Basin in
PA, Charleston Creek

ESCGP-1 # ESX10-015-0338
Applicant Name Talisman Energy USA, Inc.
Contact Person Tracy Gregory
Address 337 Daniel Zenker Drive
City, State, Zip Horseheads, NY 14845
County Bradford
Township(s) Wells Twp.
Receiving Stream(s) and Classification(s) Beckwith Creek,
Mill Creek

ESCGP-1 # ESX10-037-0003
Applicant Name Chief Oil & Gas LLC
Contact Person Michael Hritz
Address 6051 Wallace Road Ext., Ste 210
City, State, Zip Wexford, PA 15090
County Columbia
Township(s) Jackson Twp.
Receiving Stream(s) and Classification(s) UNT to Little
Fishing Creek, UNT to West Creek, Fishing Creek

ESCGP-1 # ESX10-081-0104
Applicant Name Chief Oil & Gas LLC
Contact Person Michael Hritz
Address 6051 Wallace Road Ext., Ste 210
City, State, Zip Wexford, PA 15090
County Lycoming
Township(s) Penn Twp.
Receiving Stream(s) and Classification(s) UNT to Little
Muncy Creek, W. Br. Susquehanna River

ESCGP-1 # ESX10-115-0055
Applicant Name Carrizo Maracellus, LLC
Contact Person Gary Byron
Address 579 Hoffman Drive

City, State, Zip Karthaus, PA 16845
 County Susquehanna
 Township(s) Jessup Twp.
 Receiving Stream(s) and Classification(s) UNT to East
 Branch Wyalusing Creek

ESCGP-1 # ESX10-081-0106
 Applicant Name Anadarko Marcellus Midstream, LLC
 Contact Person Bertha Nefe
 Address P. O. Box 1330
 City, State, Zip Houston, TX 77251-1330
 County Lycoming
 Township(s) Cummings Twp.
 Receiving Stream(s) and Classification(s) UNTs to First
 Fork Larrys Creek, UNTs to Dam Run, UNTs to
 Ramsey Run

ESCGP-1 # ESX10-015-0334
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford
 Township(s) Albany Twp.
 Receiving Stream(s) and Classification(s) South Branch
 Towanda Creek, Towanda Creek

ESCGP-1 # ESX10-015-0332
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford
 Township(s) Asylum Twp.
 Receiving Stream(s) and Classification(s) Bennetts Creek,
 Durell Creek, Susquehanna River

ESCGP-1 # ESX10-015-0336
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford
 Township(s) Rome Twp.
 Receiving Stream(s) and Classification(s) UNT to Bullard
 Creek, Bullard Creek

ESCGP-1 # ESX10-015-0321
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford
 Township(s) N. Towanda Twp.
 Receiving Stream(s) and Classification(s) Sugar Creek

ESCGP-1 # ESX10-015-0218(01)
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford
 Township(s) Albany Twp.
 Receiving Stream(s) and Classification(s) Ladds Creek
 and UNT to Ladds Creek/Beaver Run, and UNT to
 Beaver Run, South Br. Towanda Creek

ESCGP-1 # ESX10-015-0339
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford

Township(s) Tuscarora Twp.
 Receiving Stream(s) and Classification(s) Tuscarora
 Creek, Susquehanna River

ESCGP-1 # ESX09-015-0038(01)
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford
 Township(s) Albany Twp.
 Receiving Stream(s) and Classification(s) UNT to French
 Creek, French Creek

ESCGP-1 # ESX10-015-0333
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford
 Township(s) Orwell Twp.
 Receiving Stream(s) and Classification(s) UNT to Wysox
 Creek, Wysox Creek

ESCGP-1 # ESX10-115-0063
 Applicant Name Williams Production Appalachia, LLC
 Contact Person David Freudenrich
 Address 1000 Town Center, Suite 130
 City, State, Zip Canonsburg, PA 15317
 County Susquehanna
 Township(s) Liberty Twp.
 Receiving Stream(s) and Classification(s) UNT to Little
 Rhiney Creek, Snake Creek

ESCGP-1 # ESX10-015-0329
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Bradford
 Township(s) Standing Stone Twp.
 Receiving Stream(s) and Classification(s) Vought Creek

ESCGP-1 # ESX10-115-0064
 Applicant Name Chesapeake Appalachia, LLC
 Contact Person Eric Haskins
 Address 101 North Main Street
 City, State, Zip Athens, PA 18810
 County Susquehanna
 Township(s) Auburn Twp.
 Receiving Stream(s) and Classification(s) Little
 Meshoppen Creek

ESCGP-1 # ESX10-015-0337
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Bradford
 Township(s) Orwell Twp.
 Receiving Stream(s) and Classification(s) UNT to Trout
 Stream, UNT to Pendleton Creek, Trout Stream,
 Pendleton Creek

ESCGP-1 # ESX10-015-0341
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Bradford
 Township(s) Pike Twp.
 Receiving Stream(s) and Classification(s) Williams Creek

ESCGP-1 # ESG10-117-0224
 Applicant Name Talisman Energy USA, Inc.

Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Tioga
 Township(s) Ward Twp.
 Receiving Stream(s) and Classification(s) UNT to Fellows
 Creek, UNT to Fall Brook

ESCGP-1 # ESG10-117-0175
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Tioga
 Township(s) Jackson Twp.
 Receiving Stream(s) and Classification(s) Bear Creek

ESCGP-1 # ESX10-015-0342
 Applicant Name Talisman Energy USA, Inc.
 Contact Person Tracy Gregory
 Address 337 Daniel Zenker Drive
 City, State, Zip Horseheads, NY 14845
 County Bradford
 Township(s) Pike Twp.
 Receiving Stream(s) and Classification(s) Gaylord Creek

ESCGP-1 # ESG10-117-0228
 Applicant Name Ultra Resources, Inc.
 Contact Person Erica Tokarz
 Address 5 East Avenue, #108
 City, State, Zip Wellsboro, PA 16901-1613
 County Tioga
 Township(s) Elk Twp.
 Receiving Stream(s) and Classification(s) O'Connor
 Branch, Little Slate Run

ESCGP-1 # ESG10-117-0229
 Applicant Name Ultra Resources, Inc.
 Contact Person Erica Tokarz
 Address 5 East Avenue, #108
 City, State, Zip Wellsboro, PA 16901-1613
 County Tioga
 Township(s) Elk Twp.
 Receiving Stream(s) and Classification(s) Thompson
 Hollow, O'Connor Branch, Trib. 21843, Schoenover
 Hollow, Elk Run Basin

ESCGP-1 # ESG10-117-0215
 Applicant Name Ultra Resources, Inc.
 Contact Person Erica Tokarz
 Address 5 East Avenue, #108
 City, State, Zip Wellsboro, PA 16901-1613
 County Tioga
 Township(s) Elk and Gaines Twps.
 Receiving Stream(s) and Classification(s) Dewey Hollow,
 Thompson Hollow, Elk Run

SPECIAL NOTICES

Advertisement For Proposal

In accordance with Act 101 and Section 272 of the PA Solid Waste Rules and Regulations (as amended), the County of Susquehanna is seeking waste disposal capacity for municipal solid waste (MSW) for a minimum of five (5) years, with an option to extend said capacity for up to five (5) additional years, for a total of ten (10) years. Susquehanna County is hereby soliciting responses to qualify facilities to provide processing/disposal capacity for County generated MSW, to begin on or after April 1, 2011.

Copies of Susquehanna County's Facility Qualification Request (FQR) may be obtained from the Susquehanna

County Recycling Center, 133 Ellsworth Drive, Montrose, PA 18801 or by calling (570) 278-3509. All responses must be made on the Submittal Form and in accordance with the Instructions to Respondents provided in the FQR. The respondent must submit the original and three (3) copies to the Susquehanna County Courthouse, P. O. Box 218, 105 Maple Street, Montrose, PA 18801, Attention: Sylvia Beamer by 3:00 p.m. EDT on December 29, 2010. Qualified facilities will be notified once all applications have been reviewed by the Susquehanna County Solid Waste Advisory Committee.

Susquehanna County reserves the right to reject any or all responses and to waive any informalities in the solicitation process.

HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

Proposed Interim Response

Properties Adjacent To Former Karnish Instruments Site City of Lock Haven, Clinton County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P.S. §§ 6029.101—6020.1305), proposes to initiate an interim response at five properties adjacent to the former Karnish Instruments Site located in Lock Haven, Clinton County.

The sites of concern are five properties located adjacent to the former Karnish Instruments, Inc. property at 210 Third Avenue in the City of Lock Haven. These sites are in an area of mixed residential and commercial use.

The 210 Third Avenue property was used by Karnish Instruments to conduct repair and maintenance of aircraft instruments containing radium paint. According to the deed, the property was owned by Louis and Frances Karnish from October 1956 until June 1976. Karnish continued operating at the site until approximately 1979. In 1982, through an Article of Agreement, Ron Myers, Sr. leased the building that became Ron's Rental to conduct business as an equipment rental and repair shop. Myers took ownership of the building in 1996, and constructed four apartments on the second floor in 2006. The business operated at this location until the Department initiated an interim response at the site in May 2008, which was completed in February 2010. Subsequent site characterizations revealed radium-226 contamination in soils on five neighboring properties.

The five sites included under this interim response proposal are located at 250 Third Avenue, 342 Third Avenue, a vacant parcel behind 342 Third Avenue, 268 Bennage Avenue and 800 Maple Street. The soil contamination at these properties ranges from an isolated 60 sq foot area less than 6 inches deep at 268 Bennage Avenue; to an approximately 20,995 sq foot site-wide area with an average thickness of less than 6 inches at 250 Third Avenue.

The Department's major objective in addressing these sites is to protect the public health and environment by eliminating any health threat posed by exposure to the radium, as well as any potential radon contamination through inhalation and direct contact.

To achieve this objective, the following alternatives were considered:

Alternative 1.

This action would be to conduct no further activities at the site leaving it in its current condition.

Alternative 2.

This alternative would also leave the site in its current condition, and would provide minimal protection reliant on institutional controls placed on the property deed. The institutional controls would be intended to limit exposure to members of the public.

Alternative 3.

Alternative 3 would result in unrestricted release of some areas and restricted release of the remaining areas. Work consists of excavation of impacted soil in grassy areas only, transportation to and disposal of impacted soils in a licensed facility, backfilling of excavated areas, restoration of backfilled areas, and a final status survey to conduct a dose assessment. Contaminated soil would remain beneath the asphalted areas and beneath the Lock Haven Court building.

Alternative 4.

Alternative 4 would result in unrestricted release of some areas and restricted release of the remaining areas. Work consists of implementing Alternative 3, with the addition of excavation of contaminated materials under the asphalt and restoring the parking area when complete. Contaminated soil would remain beneath the Lock Haven Court building.

Alternative 5.

Alternative 5 would result in unrestricted release of the entire property. Work consists of implementing Alternative 4, with the additional excavation of impacted soil from beneath the Lock Haven Court building and making related restorations. Contamination would be remediated on all properties to regulatory levels that are suitable for use without restrictions.

The Department's preferred course of action is Alternative No. 5, consisting of excavation of all known contamination to regulatory levels that would leave the properties suitable for use without restrictions. This was determined to be the response that is the most permanent and most protective of human health and the environment.

All information (documents, technical references, detailed site information, and the like), which was used as the basis for evaluation of alternatives and selection of the proposed interim response action outlined in this notice, is contained in the Administrative Record. The Administrative Record is available for public inspection from 8:30 a.m. to 5 p.m., Monday through Friday, at the Lock Haven City Hall, 20 East Church Street, Lock Haven, PA or by calling Kathy Arndt to arrange an appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Department's Northcentral Field Operations Office, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.

Written comments concerning the Department's proposed response action and information in the Administrative Record will be accepted either in person if delivered to the West Third Street office on or before Friday, March 11, 2011, or by mail postmarked on or before March 11, 2011, sent to the attention of Cheryl Sinclair at 208 West Third Street, Williamsport, PA 17701, or by e-mail sent to csinclair@state.pa.us on or before midnight March 11, 2011. All written and oral comments received during the public comment period and the Department's responses, will be placed into the Administrative Record.

The Department is providing this notice under section 506(b) of HSCA. The date of publication of this notice in the *Pennsylvania Bulletin* initiates the 90-day comment period on the Administrative Record, as provided under HSCA.

Public Meeting and Public Hearing

Properties Adjacent To Former Karnish Instruments Site City of Lock Haven, Clinton County

The Department of Environmental Protection (Department) will conduct a public meeting at 6 p.m. on Wednesday, January 19, 2011, in the Council Chambers at Lock Haven City Hall to discuss the proposed remedial actions at the five sites included in this interim response proposal. Staff from the Department's Environmental Cleanup and Radiation Protection programs will make presentations and then answer questions from the public.

The public meeting will be followed by a Department public hearing beginning at 7:30 p.m. during which time citizens will have an opportunity to present oral testimony regarding the proposed remedial actions. Anyone who wishes to present oral testimony during the public hearing may register that evening prior to the hearing. Citizens will have a maximum of 5 minutes each to present testimony. Written testimony of any length also will be accepted. The testimony will be recorded by a court reporter and transcribed into a written document. The Department will respond in writing to all relevant testimony provided during the public hearing.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act of 1990 should contact Daniel T. Spadoni at (570) 327-3659 or through the Pennsylvania AT&T Relay Services at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

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

03991301 and NPDES Permit # PA0235407, Rosebud Mining Company, (301 Market Street, Kittanning, PA 16201), to revise the permit and related NPDES permit for the Logansport Mine in Bethel Township, **Armstrong County** to install the Taylor Run Portal and add one NPDES discharge point. Application also includes a request for a Section 401 Water Quality Certification. Written comments or objection on the permit application and the request for Section 401 Water Quality Application may be submitted to the Department. Surface Acres Proposed 18.6. Receiving Stream: Taylor Run, classified for the following use: WWF. Application received: August 18, 2010.

[Pa.B. Doc. No. 10-2366. Filed for public inspection December 10, 2010, 9:00 a.m.]

Bid Opportunity

BOGM 10-2, Cleaning Out and Plugging 23 Abandoned Oil Wells (Gregory Souchik, Daniel T. Holly, Jr., Edward L. Greek, Allegheny National Forest, Jeanine L. Redington (c/o Craig W. Redington, POA), Mr. and Ms. James E. Shield, Ralph A. Rose, Oak Hill Cemetery (c/o Barbara Steinhauer, Treasurer), Mr. and Mrs. Michael A. Schuler, Sandra H. McKinnley, Dr. Widad and Mrs. Cheryl Bazzoui Properties), Bradford City, Lewis Run Borough,

Foster and Bradford Townships, McKean County. The principal items of work include cleaning out and plugging 23 abandoned oil wells, estimated to be 1,500 feet in depth, to Department of Environmental Protection specifications, preparing and restoring well site and mobilizing and demobilizing plugging equipment. This project issues on December 10, 2010, and bids will be opened on January 13, 2011, at 2 p.m. Bid documents cost \$10 per set and will not be mailed until payment has been received. A prebid conference is planned for this project but a date has not been set. Use the contact information contained in this advertisement to find out more about the prebid. Contact the Construction Contracts Section at (717) 787-7820 or joelmiller@state.pa.us for more information on this bid.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-2367. Filed for public inspection December 10, 2010, 9:00 a.m.]

Bid Opportunity

OSM 10(0753)101.1, Abandoned Mine Reclamation Project, Keister's Southeast, Slippery Rock Township, Butler County. The principal items of work and approximate quantities include grading 51,500 cubic yards and seeding 6.0 acres. This bid issues December 10, 2010, and bids will be opened on January 11, 2011, at 2 p.m. Bid documents cost \$10 per set and will not be mailed until payment has been received. This project is financed by the Federal government under the authority given it by the Surface Mining Control and Reclamation Act of 1977 (act) (30 U.S.C.A. §§ 1201—1328), and is subject to the act, and to the Federal grant for this project. Contact the Construction Contracts Section at (717) 787-7820 or joelmiller@state.pa.us for more information on this bid.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-2368. Filed for public inspection December 10, 2010, 9:00 a.m.]

Bid Opportunity

OSM 17(6457)101.1, Abandoned Mine Reclamation Project, Baughman Cemetery East, Woodward Township, Clearfield County. The principal items of work and approximate quantities include grading 111,500 cubic yards; Channel Excavation 200 cubic yards; subsurface drains with cleanouts 500 linear feet; incorporation of papermill sludge 3,760 ton; and seeding 18.8 acres. This bid issues December 10, 2010, and bids will be opened on January 11, 2011, at 2 p.m. Bid documents cost \$10 per set and will not be mailed until payment has been received. This project is financed by the Federal government under the authority given it by the Surface Mining Control and Reclamation Act of 1977 (act) (30 U.S.C.A. §§ 1201—1328), and is subject to the act, and to the Federal grant for this project. Contact the Construction Contracts Section at (717) 787-7820 or joelmiller@state.pa.us for more information on this bid.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-2369. Filed for public inspection December 10, 2010, 9:00 a.m.]

Extension of Pennsylvania National Pollutant Discharge Elimination System Stormwater Discharges from Municipal Separate Storm Sewer Systems General Permit (PAG-13)

Under The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P.S. §§ 510-5, 510-17 and 510-20), the Department of Environmental Protection (Department) is, by this notice, extending for an additional 6 months the availability of the current National Pollutant Discharge Elimination System Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s) General Permit (PAG-13). The current PAG-13 permit was last extended for 9 months at 40 Pa.B. 4714 (August 14, 2010) and is scheduled to expire at midnight on December 9, 2011. This 6-month extension will be effective on December 10, 2011, and will expire at midnight on June 11, 2012.

The Department is extending the availability of this permit to provide additional time for the United States Environmental Protection Agency Region III office and the Department to complete coordination on the renewal of PAG-13, to provide time for municipal outreach on the revised permit and to provide municipalities time to prepare their permit applications and supporting information. By this notice, the Department also is extending all existing PAG-13 permit approvals, waivers from permit application requirements and exemptions from the MS4 operator designation scheduled to expire. Existing operators of regulated small MS4s who are using the general permit are authorized to continue to discharge stormwater in accordance with the terms and conditions of the general permit. Included in this extension is the requirement to continue implementation of the existing program and to provide annual reports on the progress of program implementation.

Permittees covered by an individual permit shall continue to implement the requirements of their permit and shall request a renewal of coverage based on the expiration date and terms and condition of their permit.

The existing PAG-13 permit documents will continue to be available from the Department's regional offices until they are replaced or updated. In addition, the permit documents are on file at the Department's Bureau of Watershed Management, Rachel Carson State Office Building, 400 Market Street, 10th Floor, Harrisburg, PA 17101. This package also is available on the Department's web site at www.depweb.state.pa.us (DEP Keyword: Stormwater).

The permit documents also can be obtained by contacting Penda Powell at pepowell@state.pa.us or (717) 772-5807. Persons with a disability may use the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-2370. Filed for public inspection December 10, 2010, 9:00 a.m.]

Nutrient and Sediment Reduction Credit Trading Program; Notice of Proposals

The Department of Environmental Protection (Department) provides notice of the following proposal under the Nutrient and Sediment Reduction Credit Trading Pro-

gram (Trading Program). This proposal was submitted under The Clean Streams Law (35 P.S. §§ 691.1—691.1001) and 25 Pa. Code § 96.8 (relating to use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed).

Trading is a market-based program that provides incentives for entities to create nutrient reduction credits by going beyond statutory, regulatory or voluntary obligations and goals by removing nutrients from a watershed. The credits can be traded to help others more cost-effectively meet their obligations or goals. The primary purpose of the Trading Program is to provide for more efficient ways for National Pollutant Discharge Elimination System (NPDES) permittees to meet their effluent limits for nutrients and sediment. Currently, the focus of the program is on the Chesapeake Bay Watershed.

This notice relates to submitted proposals through November 22, 2010.

Background

Before a credit can be used by an NPDES permittee, a three-step process is followed: (1) the credit proposal must be approved; (2) it must be verified; and (3) it must be registered.

Approval is also known as certification, which is a written approval by the Department for the use of a nutrient reduction activity to generate credits. Certifications are based on at least: (1) a credit proposal describing the qualifying nutrient reduction activity that will reduce the nutrient loadings delivered to the applicable watershed; (2) the calculation to quantify the pounds of reductions expected; and (3) a verification plan that, when implemented, ensures that the qualifying nutrient reduction activity has taken place. The proposals described in this notice apply to the Chesapeake Bay Watershed.

Once the credits are certified, they must be verified to be applied towards an NPDES permit for compliance with effluent limits. Verification means implementation of the verification plan contained in a certification, as required by the Department. Verification plans require annual submittal of documentation to the Department that demonstrates that the qualifying nutrient reduction activity has taken place for the applicable compliance year.

The credits also need to be registered by the Department before they can be used to meet effluent limits in an NPDES permit. Registration occurs only after credits have been certified, verified and a contract has been submitted. For the Chesapeake Bay Watershed, the Department will register credits for use during the compliance year in which the qualifying pollutant reduction activity has taken place. The Department will provide the credits with an annual registry number for reporting and tracking purposes.

Proposal

The following new proposal is being reviewed by the Department. The Department will accept written comments on these proposed projects for 30 days.

<i>Proposal Applicant</i>	<i>Proposal Description</i>
Kelly Township	Nitrogen and phosphorous credits generated by the operation of the wastewater treatment plant.

For further information about the proposal, or the Trading Program or to submit comments, contact Ann Roda, Water Planning Office, Department of Environmental Protection, P.O. Box 2063, Harrisburg, PA 17105-

2063, (717) 787-4726, aroda@state.pa.us or visit the Department's web site at www.depweb.state.pa.us (DEP Keywords: "Nutrient Trading").

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-2371. Filed for public inspection December 10, 2010, 9:00 a.m.]

DEPARTMENT OF GENERAL SERVICES

Real Estate for Sale Crawford County

The Department of General Services (Department) will accept bids for the purchase of 0.3297-acre ± of land and building formerly known as the Meadville National Guard Armory located at 894 Diamond Park, City of Meadville, Crawford County. Bids are due Thursday, March 3, 2011. Interested parties wishing to receive a copy of Solicitation No. 94403 should view the Department's web site at www.dgs.state.pa.us or call Lisa Kettering at (717) 787-1321.

ELIZABETH A. O'REILLY,
Acting Secretary

[Pa.B. Doc. No. 10-2372. Filed for public inspection December 10, 2010, 9:00 a.m.]

DEPARTMENT OF HEALTH

Electronically Transmitted Prescriptions

It has come to the Department of Health's (Department) attention that there is concern from members of the medical and pharmaceutical communities whether the electronic transmission of prescriptions to a pharmacy violates provisions of The Controlled Substance, Drug, Device and Cosmetic Act (DD&C Act) (35 P.S. §§ 780-101—780-144) and the regulations promulgated thereunder at 28 Pa. Code §§ 25.1 to 25.131. Through this notice, the Department seeks to clarify its position regarding whether this is an acceptable practice for the medical and pharmaceutical communities under the DD&C Act and its regulations, most notably 28 Pa. Code §§ 25.53(a) and (d) and 25.56(b) (relating to prescription orders; and prescription record keeping).

The Department recognizes the important technological advancements in the electronic prescribing of prescriptions. Therefore, subject to the limitations set forth as follows, the Department recognizes written prescriptions to include the electronic transmission of prescriptions by authorized members of the healing arts to a patient's pharmacy for processing and that this practice by itself will not constitute a violation of the DD&C Act or its regulations, when applicable.

A. 28 Pa. Code § 25.53(a)

Section 25.53(a) of 28 Pa. Code states that prescription orders may be written on prescription blanks or may be oral, if allowed by law. The electronic transmission of prescriptions shall be considered a written order on a prescription blank provided that the transmission com-

plies with the remainder of 28 Pa. Code § 25.53 and any other requirements under Federal and other State laws or regulations, including, but not limited to, regulations promulgated by the State Board of Pharmacy at 49 Pa. Code Chapter 27, specifically 49 Pa. Code § 27.201 (relating to electronically transmitted prescriptions), and the Generic Equivalent Drugs Act (35 P.S. §§ 960.1—960.7), specifically 35 P.S. § 960.3 regarding substitution for brand name drugs; oral prescription; notice to purchaser; refusal of substitution; prices; records; labels.

Prescriptions transmitted by means of facsimile shall be considered a written order on a prescription blank provided that the facsimile transmission meets the requirements of Federal and State laws and regulations, including, but not limited to, other requirements under the DD&C Act and its regulations and regulations promulgated by the State Board of Pharmacy at 49 Pa. Code Chapter 27, specifically 49 Pa. Code § 27.20 (relating to facsimile machines).

B. 28 Pa. Code § 25.53(d)

Section 25.53(d) of 28 Pa. Code states that prescriptions for controlled substances shall be written in indelible ink, indelible pencil or typewriter and shall include certain information. Electronically transmitted prescriptions shall be considered a typewritten order and shall satisfy the requirements of this section provided that these prescriptions comply with Federal and other State laws and regulations, including, but not limited to, the remainder of 28 Pa. Code § 25.53 and 49 Pa. Code Chapter 27.

C. 28 Pa. Code § 25.56(b)

A portion of 28 Pa. Code § 25.56(b) states that records for prescription orders for controlled substances in Schedules III, IV and V shall be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is marked in red ink in the lower right corner with the letter "C," no less than 1 inch high and filed in the usual consecutively numbered prescription file for non-controlled substances.

Provided that a pharmacy can provide a hard copy or readily retrievable image of each electronically transmitted prescription for controlled substances in Schedules III, IV and V, and these hard copies or readily retrievable images meet the requirements for record keeping mandated by Federal and other State laws or regulations, including, but not limited to, 49 Pa. Code Chapter 27, the Department will deem the pharmacy to be in compliance with this section and the requirements for marking the electronic prescription in red ink with a letter "C" shall not be required.

Nothing in this notice shall be construed to waive any requirements or restrictions mandated under Federal and other State laws or regulations, including other requirements of the DD&C Act and its regulations or any other requirements issued by the appropriate State licensing boards.

This notice shall take effect immediately and remain in full force and effect until further notice by the Department.

STACY A. MITCHELL,
Deputy Secretary for Quality Assurance

[Pa.B. Doc. No. 10-2373. Filed for public inspection December 10, 2010, 9:00 a.m.]

Long-Term Care Nursing Facilities; Requests for Exception

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.3 (relating to definitions).

Fulton County Medical Center
214 Peach Orchard Road
McConnellsburg, PA 17233

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.28(b) (relating to nurses' station).

Communities at Indian Haven
1675 Saltsburg Avenue
Indiana, PA 15701

The following long-term care nursing facility is seeking an exception to 28 Pa. Code §§ 205.36(e) and 205.39(a) (relating to bathing facilities; and toilet room equipment).

Latrobe Health and Rehabilitation Center
576 Fred Rogers Drive
Latrobe, PA 15650

These requests are on file with the Department of Health (Department). Persons may receive a copy of the request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, ra-paexception@state.pa.us.

Persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division at the address listed previously.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

MICHAEL K. HUFF, R.N.,
Acting Secretary

[Pa.B. Doc. No. 10-2374. Filed for public inspection December 10, 2010, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Additional Class of Disproportionate Share Payments

The Department of Public Welfare (Department) is announcing its intent to decrease the allocation of funding for Fiscal Year (FY) 2010-2011 for disproportionate share hospital (DSH) payments to certain qualifying Medical Assistance (MA) enrolled hospitals that advance the Department's goal of enhancing access to multiple types of medical care in economically distressed areas of this Commonwealth. This decrease is the result of the Commonwealth's budget constraints. There will be no

change in the qualifying criteria or payment methodology for this additional class of DSH payments.

In making these payments, the Department will ensure that no acute care general hospital will receive any DSH payment that is in excess of its hospital specific DSH upper payment limit and the Commonwealth will not exceed its aggregate annual DSH allotment.

Fiscal Impact

The FY 2010-2011 fiscal impact of this allocation for the additional class of DSH payments is \$36.015 million (\$16.016 million in State funds). These funds are provided for in the FY 2010-2011 MA—Inpatient appropriation.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

MICHAEL P. NARDONE,
Acting Secretary

Fiscal Note: 14-NOT-674. (1) General Fund; (2) Implementing Year 2010-11 is \$16,016,000; (3) 1st Succeeding Year 2011-12 is \$16,016,000; 2nd Succeeding Year 2012-13 is \$16,016,000; 3rd Succeeding Year 2013-14 is \$16,016,000; 4th Succeeding Year 2014-15 is \$16,016,000; 5th Succeeding Year 2015-16 is \$16,016,000; (4) 2007-08 Program—\$468,589,000; 2008-09 Program—\$426,822,000; 2009-10 Program—\$373,515,000; (7) MA—Inpatient; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 10-2375. Filed for public inspection December 10, 2010, 9:00 a.m.]

Additional Class of Disproportionate Share Payments for Critical Access Hospitals and Qualifying Rural Hospitals

The Department of Public Welfare (Department) is announcing its intent to increase the allocation of funding for Fiscal Year (FY) 2010-2011 for disproportionate share hospital (DSH) payments to qualifying hospitals based on the designation as a Critical Access Hospital (CAH) or as a qualifying rural hospital. There will be no change in the current qualifying criteria or methodology for determining eligibility for these payments.

Fiscal Impact

For FY 2010-2011, CAH DSH payments in the amount of \$10.543 million (\$4.677 million in State funds and \$5.866 million in Federal funds upon approval by the Centers for Medicare and Medicaid Services) will be paid to qualifying hospitals.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Build-

ing, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require an auxiliary aid or service may submit comments using the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

MICHAEL P. NARDONE,
Acting Secretary

Fiscal Note: 14-NOT-671. (1) General Fund; (2) Implementing Year 2010-11 is \$4,677,000; (3) 1st Succeeding Year 2011-12 is \$0; 2nd Succeeding Year 2012-13 is \$0; 3rd Succeeding Year 2013-14 is \$0; 4th Succeeding Year 2014-15 is \$0; 5th Succeeding Year 2015-16 is \$0; (4) 2007-08 Program—\$0; 2008-09 Program—\$4,888,000; 2009-10 Program—\$4,378,000; (7) Medical Assistance—CAHs; (8) recommends adoption. Funds have been included in the budget to cover this increase.

[Pa.B. Doc. No. 10-2376. Filed for public inspection December 10, 2010, 9:00 a.m.]

DEPARTMENT OF REVENUE

Rates of Tax on Aviation Gasoline and Jet Fuel for 2011; Oil Company Franchise Tax Rate for 2011; Alternative Fuels Tax Rates for 2011

Aviation Gasoline and Jet Fuels

Aviation Gasoline Rate for 2011

Under 74 Pa.C.S. § 6121(b) (relating to tax on aviation fuels), the Secretary of Revenue (Secretary) announces that for calendar year 2011 the rate of tax on aviation gasoline and all other liquid fuels used or sold and delivered by distributors within this Commonwealth for use as fuel in propeller-driven piston engine aircraft or aircraft engines increases to the new rate of 5.5¢¹ per gallon or fractional part thereof.

Jet Fuel Rate for 2011

Under 74 Pa.C.S. § 6131(b) (relating to tax on jet fuels), the Secretary announces that for calendar year 2011 the rate of tax on jet fuels used or sold and delivered by distributors within this Commonwealth for use as fuel in turbine-propeller jet, turbojet and jet-driven aircraft and aircraft engines increases to the new rate of 1.7¢ per gallon or fractional part thereof.

Calculating the 2011 Aviation Gasoline and Jet Fuel Rates

The rate of tax on aviation gasoline is adjusted annually beginning on January 1, 1985, and each January 1 thereafter. The rate of tax on jet fuels is adjusted annually beginning on January 1, 1986, and each January 1 thereafter. Under 74 Pa.C.S. §§ 6121(b) and 6131(b), the rate of each tax increases or decreases 0.1¢ per gallon for each 10% increase or decrease in the producer price index for jet fuel as determined by the United States Department of Labor, Bureau of Labor Statistics, for the most recent 12-month period available

¹ The rate of 5.5¢ per gallon consists of the 1.5¢ per gallon tax imposed by 75 Pa.C.S. § 9004(c)(1) and the 4.0¢ per gallon additional tax imposed by 74 Pa.C.S. § 6121(a). As limited by 74 Pa.C.S. § 6121(b), the combined rate of these two component taxes may never exceed 6¢ per gallon or be less than 3¢ per gallon.

as of November 1, subject to a maximum rate of 6.0¢ per gallon for aviation gasoline and 2.0¢ per gallon for jet fuels.

On November 1, 2010, the most recently available 12-month period was September 2009 to September 2010, as reported in Bureau of Labor Statistics, United States Department of Labor, Producer Price Indexes, September 2010, USDL 10-1425, released October 14, 2010, for which the percentage change was +17.1%. Accordingly, the aviation gasoline tax rate increases from the 2010 rate of 5.4¢ per gallon to the new 2011 rate of 5.5¢ per gallon; the jet fuel tax rate also increases, from the 2010 rate of 1.6¢ per gallon to the new 2011 rate of 1.7¢ per gallon.

Oil Company Franchise Tax

Oil Company Franchise Tax Rate for 2011

The Secretary announces that for the calendar year 2011, the rate of the oil company franchise tax remains at the current rate of 19.2¢ per gallon on all liquid fuels and 26.1¢ per gallon on all fuels used or sold and delivered by distributors within this Commonwealth under 75 Pa.C.S. § 9004(b) (relating to imposition of tax, exemptions and deductions).

Calculating the 2011 Oil Company Franchise Tax Rate

The rate of the oil company franchise tax imposed under 75 Pa.C.S. Chapter 95 (relating to taxes for highway maintenance and construction), 75 Pa.C.S. § 9502 (relating to imposition of tax), and collected under 75 Pa.C.S. Chapter 90 (relating to liquid fuels and fuels tax act), 75 Pa.C.S. § 9004(b), is determined annually by the Department of Revenue (Department) and announced by each December 15 for the following calendar year. The tax rate is determined on a "cents per gallon equivalent basis," which is defined by 75 Pa.C.S. § 9002 (relating to definitions) as:

The average wholesale price per gallon multiplied by the decimal equivalent of any tax imposed by section 9502 (relating to imposition of tax), the product of which is rounded to the next highest tenth of a cent per gallon. The rate of tax shall be determined by the Department of Revenue on an annual basis beginning every January 1 and shall be published as a notice in the *Pennsylvania Bulletin* no later than the preceding December 15. In the event of a change in the rate of tax imposed by section 9502, the Department shall redetermine the rate of tax as of the effective date of such change and give notice as soon as possible.

"Average wholesale price" as previously used is defined as:

The average wholesale price per gallon of all taxable liquid fuels and fuels, excluding the federal excise tax and all liquid fuels taxes, as determined by the Department of Revenue for the 12-month period ending on the September 30 immediately prior to January 1 of the year for which the rate is to be set. In no case shall the average wholesale price be less than 90¢ nor more than \$1.25 per gallon.

For the 12-month period ending September 30, 2010, the Department has determined that the average wholesale price of liquid fuels and fuels was \$2.147 per gallon, which exceeds the statutory maximum of \$1.25; therefore, an average wholesale price of \$1.25 is used to compute the tax rate for 2011.

The oil company franchise tax imposed under 75 Pa.C.S. § 9502 in terms of mills applicable to each gallon is:

<i>Imposition Section</i>	<i>Liquid Fuels</i>	<i>Fuels</i>
75 Pa.C.S. § 9502(a)(1)	60.0	60.0
75 Pa.C.S. § 9502(a)(2)	55.0	55.0
75 Pa.C.S. § 9502(a)(3)	38.5	38.5
75 Pa.C.S. § 9502(a)(4)	00.0	55.0
Total Mills per Gallon:	153.5	208.5
Decimal Equivalent:	.1535	.2085
Multiply by Average Wholesale Price:	× \$1.25	× \$1.25
Product:	19.188¢	26.063¢
Oil Company Franchise Tax per Gallon (Rounded Up to Next Highest Tenth):	19.2¢	26.1¢

Collection of Oil Company Franchise Tax

The act of April 17, 1997 (P. L. 6, No. 3) provides that the oil company franchise tax as previously computed is collected at the same time as the liquid fuels and fuels tax of 12¢ per gallon; therefore, effective January 1, 2011, the combined rate of tax for liquid fuels (primarily gasoline) is 31.2¢ per gallon and for fuels (primarily undyed diesel fuel) is 38.1¢ per gallon.

Alternative Fuels Tax Rates For 2011

Under 75 Pa.C.S. § 9004(d), the Secretary is required to compute the rate of tax applicable to each alternative fuel on a gallon-equivalent-basis. Under 75 Pa.C.S. § 9002, "gallon-equivalent-basis" is defined as the "amount of any alternative fuel as determined by the Department to contain 114,500 BTUs." The amount determined on a "gallon-equivalent-basis" for each alternative fuel is subject to the liquid fuels and oil company franchise taxes currently imposed on 1 gallon of gasoline. The rate of tax on 1 gallon of gasoline during the period of this notice is 12.0¢ for the liquid fuels tax and 19.2¢ for the oil company franchise tax for a total tax of 31.2¢ per gallon of gasoline.

The Secretary announces that the 2011 tax rates for alternative fuels are as follows:

<i>Alternative Fuel</i>	<i>Rate of Conversion (BTU/gal of alternative fuel)</i>	<i>Amount Equivalent to One Gallon of Gasoline at 114,500 BTU per gallon</i>	<i>Tax Rate per Gallon of Alternative Fuel</i>
Ethanol	76,400	1.499	\$.208
Methanol	56,560	2.024	\$.154
Propane/LPG	83,500	1.371	\$.228
E-85	80,460	1.423	\$.219
M-85	65,350	1.752	\$.178
Compressed Natural Gas (CNG)	29,000 @ 3,000 PSI	3.948	\$.079
Liquefied Natural Gas (LNG)	66,640	1.718	\$.182
Electricity	3,412 Btu/KWH	33.558 KWH	\$.0093/KWH

C. DANIEL HASSELL,
Secretary

[Pa.B. Doc. No. 10-2377. Filed for public inspection December 10, 2010, 9:00 a.m.]

ENVIRONMENTAL HEARING BOARD

OSRAM Sylvania, Inc. v. DEP; EHB Doc. No. 2010-178-C

OSRAM Sylvania, Inc. has appealed the issuance by the Department of Environmental Protection of an NPDES permit to OSRAM Sylvania, Inc. for a facility in Wellsboro Borough, Tioga County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is required in an alternative form contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the Pennsylvania AT&T Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.81 (relating to intervention). Copies of the Board's

rules of practice and procedure are available upon request from the Board.

THOMAS W. RENWAND,
Chairperson

[Pa.B. Doc. No. 10-2378. Filed for public inspection December 10, 2010, 9:00 a.m.]

GOVERNOR'S OFFICE OF HEALTH CARE REFORM

Commonwealth Health Care Reform Implementation Advisory Committee Meeting

The Commonwealth Health Care Reform Implementation Advisory Committee, established by Executive Order 2010-02, will hold a public meeting on Tuesday, December 14, 2010, from 2 to 4 p.m., in the Pennsylvania Housing Finance Agency Building, Board Room (Street Level), 211 North Front Street, Harrisburg, PA.

Subcommittee meetings will be held prior to the Advisory Council meeting as follows:

Enrollment/Access Subcommittee	9:30—11 a.m.
Other Critical Reforms Subcommittee	11 a.m.—12:30 p.m.
Exchange Subcommittee	12:30—2 p.m.

This meeting is subject to cancellation without notice.

ANN S. TORREGROSSA, Esq.,
Director

[Pa.B. Doc. No. 10-2379. Filed for public inspection December 10, 2010, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations. They are scheduled to be considered on the dates noted. The Commission's public meetings are held at 333 Market Street, 14th Floor, Harrisburg, PA at 10 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy or a copy can be obtained on the web site, www.irrc.state.pa.us.

Final-Form

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
7-441	Environmental Quality Board Air Quality Fee Schedules	11/23/10	N/A*
7-458	Environmental Quality Board Incidental Coal Extraction, Bonding, Enforcement, Sediment Control and Remining Financial Guarantees	11/23/10	N/A*
16A-4710	State Registration Board for Professional Engineers, Land Surveyors and Geologists Continuing Education	11/24/10	12/16/10
16-43	Department of State Schedule of Civil Penalties—Engineers, Land Surveyors and Geologists	11/24/10	12/16/10
16A-4318	State Board of Chiropractic Continuing Education Violations	11/24/10	12/16/10
16-44	Department of State Schedule of Civil Penalties— Chiropractors	11/24/10	12/16/10

*Due to the sine die adjournment of the General Assembly, the public meeting date will be determined after the designation of the Standing committees in the 2011-2012 Legislative session.

SILVAN B. LUTKEWITTE, III,
Chairperson

[Pa.B. Doc. No. 10-2380. Filed for public inspection December 10, 2010, 9:00 a.m.]

INSURANCE DEPARTMENT

Children's Health Insurance Program; Benefit Changes and State Plan Amendment; Notice

The Insurance Department (Department) has or will implement several benefit changes and other changes on December 1, 2010, the beginning of its next plan year, or on the effective date indicated. The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. No. 111-3), which reauthorized the Children's Health Insurance Program (CHIP), requires several of these changes and, along with the Patient Protection and Affordable Care Act of 2010 (ACA), provides other options for states to include in their State Plan. Consistent with Federal law, the mandated benefit and administrative changes are included in a State Plan Amendment being submitted to the Centers for Medicare and Medicaid Services (CMS) on or before December 31, 2010. The State Plan Amendment also includes other changes planned by the Commonwealth's CHIP, some of which are permitted by CHIPRA and some of which are not addressed in CHIPRA.

CHIPRA mandated changes:

- Expand covered dental services (effective January 1, 2011)
- Provide a copy of the dental benefit as required annually
- Provide concurrence to meet the dental reporting requirement
- Update the projected budget for CHIP

CHIPRA optional changes:

- Even though it does not result in a change to eligibility, incorporate the required template language into Section 4 of the State Plan. The template was provided by the CMS to standardize the way states elect to cover eligible children who are lawfully residing in the United States.

- Provide a more comprehensive explanation of exclusions and limitations of benefits

ACA optional changes:

- Open CHIP coverage to children of employees of public agencies within this Commonwealth if they meet the Hardship Exception included in the ACA (effective July 1, 2010)
- Simplify the application process through the elimination of the requirement for proof of income in those instances that verification can be obtained through various data exchanges (for example, Income and Eligibility Verification System—IEVS) (effective July 1, 2010)

The complete proposed CHIP State Plan Amendment will be available through the CHIP's web site at <http://www.chipcoverspakids.com/chip-resources/resources-for-advocates-legislators-and-media/annual-reports/>.

ROBERT L. PRATTER,
Acting Insurance Commissioner

[Pa.B. Doc. No. 10-2381. Filed for public inspection December 10, 2010, 9:00 a.m.]

Pennsylvania Compensation Rating Bureau; Workers' Compensation Loss Cost Filing; Rate Filing

On November 30, 2010, the Insurance Department (Department) received from the Pennsylvania Compensation Rating Bureau (PCRB) a filing for a loss cost level change for Workers' Compensation insurance. This filing is made in accordance with section 705 of the act of July 2, 1993 (P.L. 190, No. 44). The PCRB requests an overall 0.87% increase in collectible loss costs, effective April 1, 2011, on a new and renewal basis. Also, the PCRB has calculated the Employer Assessment Factor effective April 1, 2011, to be 1.88%, as compared to the currently approved provision of 2.07%. Updates to a variety of other rating values to reflect the most recent available experience are also being submitted for approval.

The entire April 1, 2011, loss cost filing is available for review on the PCRB's web site at www.pcrb.com in the "Filings" section.

ROBERT L. PRATTER,
Acting Insurance Commissioner

[Pa.B. Doc. No. 10-2382. Filed for public inspection December 10, 2010, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insured has requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) (Act 68) in connection with the termination of the insured's automobile insurance policy. The hearing will be held in accordance with the requirements of Act 68; 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearing will be held in the Insurance Department's regional office in Harrisburg, PA. Failure by an appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Jeanette M. Morrow; file no. 10-188-95108; Erie Insurance Exchange; Doc. No. P10-11-012; January 18, 2011, 10 a.m.

Parties may appear with or without counsel and offer relevant testimony or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is

available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing, contact Donna R. Fleischauer, Human Resources Director at (717) 705-4194.

ROBERT L. PRATTER,
Acting Insurance Commissioner

[Pa.B. Doc. No. 10-2383. Filed for public inspection December 10, 2010, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insured has requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with the termination of the insured's homeowners policy. The hearing will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearing will be held in the Insurance Department's regional office in Harrisburg, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Scott A. Dietrich; file no. 10-188-94699; State Farm Fire & Casualty Insurance Company; Doc. No. P10-11-007; January 5, 2011, 1 p.m.

Parties may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously-referenced administrative hearing and require

an auxiliary aid, service or other accommodation to participate in the hearing should contact Donna R. Fleischauer, Human Resources Director at (717) 705-4194.

ROBERT L. PRATTER,
Acting Insurance Commissioner

[Pa.B. Doc. No. 10-2384. Filed for public inspection December 10, 2010, 9:00 a.m.]

UPMC Health Plan, Inc.; Group HMO Base Rate; Rate Filing

On November 24, 2010, UPMC Health Plan, Inc. submitted a rate filing to increase the premium rates for the Group HMO Product. The Plan proposes to increase the rates by 9.90%.

This filing will affect approximately 7,000 members and produce additional premium income of about \$3.56 million annually. The requested effective date of the change is January 1, 2011.

Unless formal administrative action is taken prior to February 24, 2011, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) web site at www.insurance.pa.gov. Under the tab "How to Find . . ." click on the link "View Current Rate Filings."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg Office.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, Room 1311, Strawberry Square, Harrisburg, PA 17120, csandersjo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

ROBERT L. PRATTER,
Acting Insurance Commissioner

[Pa.B. Doc. No. 10-2385. Filed for public inspection December 10, 2010, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by December 27, 2011. Documents filed in support of the applications are available for inspection and copying at the Office of the

Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Application of the following for approval to begin operating as common carriers for transportation of persons as described under the application.

A-2010-2202102. Joseph S. King (26 King Road, Cochranville, Chester County, PA 19330)—for the right to begin to transport, as a common carrier, by motor vehicle, persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the Counties of Chester and Lancaster to points in Pennsylvania, and return.

Application 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 the application.

A-2010-2212413. Walter E. Gaul, Jr. (4742 Route 210 Highway, Smicksburg, PA 16256)—for the discontinuance of service and cancellation of his certificate for the transportation of persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in Armstrong, Indiana, and Jefferson Counties, to points in Pennsylvania, and return.

*Pennsylvania Public Utility Commission, Bureau of
Transportation and Safety v. Richard Del Cristo,
t/a Abbys Limousine Services;
Doc. No. C-2010-2192983*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other Bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Richard Del Cristo, t/a Abby's Limousine Services, Respondent, maintains a principal place of business at 5600 Desert Willow Court, Fort Worth, TX 76137.

2. That Respondent was issued a certificate of public convenience by this Commission on November 7, 2005, at Docket No. A-00121930, for limousine authority.

3. That, between December 1 and December 31 of 2009, Respondent did not provide this Commission with a current list of all of his vehicles utilized under his limousine authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. It shall be mailed to: Director, Bureau of Transportation and Safety, PA Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105.

4. That, Respondent, by failing to provide this Commission with a current vehicle list, violated 52 Pa. Code § 29.333(d). The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory Staff's proposed civil penalty for this violation is \$250.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Richard Del Cristo, t/a Abby's Limousine Services the

sum of two hundred and fifty dollars (\$250) for the illegal activity described in this complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services and Enforcement
Division
Bureau of Transportation and Safety

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this Complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty days, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days. Your certified check or money order should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request the Commission to

issue a Secretarial Letter imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the Complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the penalty set forth in this Complaint.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission, Bureau of
Transportation and Safety v. Richard Breski, Jr.,
t/a Good Fellas Limousine Service;
Doc. No. C-2010-2192988*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other Bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Richard Breski, Jr., t/a Good Fellas Limousine Service, Respondent, maintains a principal place of business at 1020 Church Street, Steelton, PA 17113.

2. That Respondent was issued a certificate of public convenience by this Commission on August 25, 2006, at Docket No. A-00122526, for limousine authority.

3. That, between December 1 and December 31 of 2006, 2007, 2008, and 2009, Respondent did not provide this Commission with a current list of all of his vehicles utilized under his limousine authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. It shall be mailed to: Director, Bureau of Transportation and Safety, PA Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105.

4. That, Respondent, by failing to provide this Commission with a current vehicle list, violated 52 Pa. Code § 29.333(d). The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory Staff's proposed civil penalty for this violation is \$250.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Richard Breski, Jr., t/a Good Fellas Limousine Service the sum of two hundred and fifty dollars (\$250) for the illegal activity described in this complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowl-

edge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____
Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services and Enforcement
Division
Bureau of Transportation and Safety

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this Complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty days, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days. Your certified check or money order should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request the Commission to issue a Secretarial Letter imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the Complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the penalty set forth in this Complaint.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission, Bureau of
Transportation and Safety v. Satellite Limousine, Inc.;
Doc. No. C-2010-2192982*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other Bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Satellite Limousine, Inc., Respondent, maintains a principal place of business at 2075 Byberry Road, Suite 102, Bensalem, PA 19020.

2. That Respondent was issued a certificate of public convenience by this Commission on November 11, 2005, at Docket No. A-00121758, for limousine authority.

3. That, between December 1 and December 31 of 2009, Respondent did not provide this Commission with a current list of all of its vehicles utilized under its limousine authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. It shall be mailed to: Director, Bureau of Transportation and Safety, PA Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105.

4. That, Respondent, by failing to provide this Commission with a current vehicle list, violated 52 Pa. Code § 29.333(d). The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory Staff's proposed civil penalty for this violation is \$250.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Satellite Limousine, Inc. the sum of two hundred and fifty dollars (\$250) for the illegal activity described in this complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services and Enforcement
Division
Bureau of Transportation and Safety

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this Complaint and notice, 52 Pa. Code

§ 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty days, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days. Your certified check or money order should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request the Commission to issue a Secretarial Letter imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the Complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the penalty set forth in this Complaint.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission, Bureau of
Transportation and Safety v. A & D Limousine
Service, Inc.; Doc. No. C-2010-2192437*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other Bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That A & D Limousine Service, Inc., Respondent, maintains a principal place of business at 2070 Bristol Pike, Building 2, Suite 120, Bensalem, PA 19020.

2. That Respondent was issued a certificate of public convenience by this Commission on April 5, 2006, at Docket No. A-00120554, F.2, for limousine authority.

3. That, between December 1 and December 31 of 2006, 2007, 2008, and 2009, Respondent did not provide this Commission with a current list of all of its vehicles utilized under its limousine authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. It shall be mailed to: Director, Bureau of Transportation and Safety, PA Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105.

4. That, Respondent, by failing to provide this Commission with a current vehicle list, violated 52 Pa. Code § 29.333(d). The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory Staff's proposed civil penalty for this violation is \$250.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine A & D Limousine Service, Inc. the sum of two hundred and fifty dollars (\$250) for the illegal activity described in this complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services and Enforcement
Division
Bureau of Transportation and Safety

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this Complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty days, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the

penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days. Your certified check or money order should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request the Commission to issue a Secretarial Letter imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the Complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the penalty set forth in this Complaint.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission,
Bureau of Transportation and Safety v.
Accurate Transportation, LLC;
Doc. No. C-2010-2192436*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other Bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Accurate Transportation, LLC, Respondent, maintains a principal place of business at 5200 Hill Top Drive G-4, Brookhaven, PA 19015.

2. That Respondent was issued a certificate of public convenience by this Commission on May 5, 2005, at Docket No. A-00120433, for limousine authority.

3. That, between December 1 and December 31 of 2006, 2007, 2008, and 2009, Respondent did not provide this Commission with a current list of all of its vehicles utilized under its limousine authority. The list must contain the year, make, vehicle identification number and registration number for each vehicle. It shall be mailed

to: Director, Bureau of Transportation and Safety, PA Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105.

4. That, Respondent, by failing to provide this Commission with a current vehicle list, violated 52 Pa. Code § 29.333(d). The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory Staff's proposed civil penalty for this violation is \$250.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Accurate Limousine, LLC the sum of two hundred and fifty dollars (\$250) for the illegal activity described in this complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services and Enforcement
Division
Bureau of Transportation and Safety

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this Complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty days, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by paying the fine proposed in this Complaint by certified check or money order within twenty (20) days. Your certified check or money order should be payable to the Commonwealth of Pennsylvania and should be forwarded to:

Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request the Commission to issue a Secretarial Letter imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the Complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the penalty set forth in this Complaint.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-2386. Filed for public inspection December 10, 2010, 9:00 a.m.]

Tentative Order

Public Meeting held
November 19, 2010

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; John F. Coleman, Jr.; Wayne E. Gardner; Robert F. Powelson

Global Touch Telecom, Inc.
(2009 Assessment Report); A-311288

Tentative Order

By the Commission:

Global Touch Telecom, Inc. (Global Touch) has failed to file its 2009 Assessment Report pursuant to section 510(b) of the Public Utility Code. 66 Pa.C.S. § 510(b). Specifically, 66 Pa.C.S. § 510(b) provides that:

On or before March 31 of each year, every public utility shall file with the commission a statement under oath showing its gross intrastate operating revenues for the preceding calendar year.

Global Touch is a telecommunications interexchange reseller certificated at A-311288. Commission staff's several attempts to reach Global Touch by mail and phone to file the missing report have been unsuccessful. However, in its investigation staff did learn from a knowledgeable source that Global Touch is out of business.

The Commission puts the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of such other remedy as the Commission may deem appropriate. 66 Pa.C.S. §§ 504, 505, 506, and 3301. Based on the above facts, we tentatively conclude that it is appropriate to revoke Global Touch's certificate of public convenience without the necessity of a formal complaint as being in the public interest. Furthermore, the Commission may

take other appropriate action, including the imposition of penalties under section 3301, in lieu of cancellation, if Global Touch seeks relief from this Tentative Order; *Therefore,*

It Is Ordered That:

1. Revocation of Global Touch Telecom, Inc.'s certificate of public convenience is hereby tentatively approved as being in the public interest.

2. The Secretary serve a copy of this Tentative Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff, and also cause a copy of this Tentative Order to be published in the *Pennsylvania Bulletin* with a 30-day comment period.

3. The absence of filing of adverse public comment within 30 days after publication in the *Pennsylvania Bulletin*, this Tentative Order shall become final without further action by the Commission.

4. Upon this order becoming final, and without further action by the Commission, the certificate of public convenience held by Global Touch Telecom, Inc. at A-311288 shall be canceled, and Global Touch Telecom, Inc.'s name stricken from all active utility lists maintained by the Commission's Bureau of Fixed Utility Services and the Assessment Section of the Bureau of Administrative Services.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-2387. Filed for public inspection December 10, 2010, 9:00 a.m.]

Tentative Order

Public Meeting held
November 19, 2010

Commissioners Present: James H. Cawley, Chairperson;
Tyrone J. Christy, Vice Chairperson; John F. Coleman,
Jr.; Wayne E. Gardner; Robert F. Powelson

Uni-Tel Communications Group, Inc.
(2009 Assessment Report);
A-310724

Tentative Order

By the Commission:

Uni-Tel Communications Group, Inc. (Uni-Tel) has failed to file its 2009 Assessment Report pursuant to section 510(b) of the Public Utility Code. 66 Pa.C.S. § 510(b). Specifically, 66 Pa.C.S. § 510(b) provides that:

On or before March 31 of each year, every public utility shall file with the commission a statement under oath showing its gross intrastate operating revenues for the preceding calendar year.

Uni-Tel is a telecommunications interexchange reseller certificated at A-310724. Commission staff's several attempts to reach Uni-Tel by mail and phone to file the missing report have been unsuccessful. However, in its investigation staff did learn from a knowledgeable source that Uni-Tel is out of business.

The Commission puts the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of such other remedy as the Commission may deem appropriate. 66

Pa.C.S. §§ 504, 505, 506, and 3301. Based on the above facts, we tentatively conclude that it is appropriate to revoke Uni-Tel's certificate of public convenience without the necessity of a formal complaint as being in the public interest. Furthermore, the Commission may take other appropriate action, including the imposition of penalties under section 3301, in lieu of cancellation, if Uni-Tel seeks relief from this Tentative Order; *Therefore,*

It Is Ordered That:

1. Revocation of Uni-Tel Communications Group, Inc.'s certificate of public convenience is hereby tentatively approved as being in the public interest.

2. The Secretary serve a copy of this Tentative Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, and the Office of Trial Staff, and also cause a copy of this Tentative Order to be published in the *Pennsylvania Bulletin* with a 30-day comment period.

3. The absence of filing of adverse public comment within 30 days after publication in the *Pennsylvania Bulletin*, this Tentative Order shall become final without further action by the Commission.

4. Upon this order becoming final, and without further action by the Commission, the certificate of public convenience held by Uni-Tel Communications Group, Inc. at A-310724 shall be canceled, and Uni-Tel Communications Group, Inc.'s name stricken from all active utility lists maintained by the Commission's Bureau of Fixed Utility Services and the Assessment Section of the Bureau of Administrative Services.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-2388. Filed for public inspection December 10, 2010, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project No. 10-148.S Asbestos Monitoring Services for the Mustin Housing Demolition, until 2 p.m. on Thursday, January 6, 2011. The documents can be obtained on the PRPA web site at www.philaport.com and will be available December 14, 2010. Individuals must contact the Procurement Department at (215) 426-2600 to provide contact information to receive addenda and additional information about this project. PRPA is an equal opportunity employer. Firms must comply with all applicable equal employment opportunity laws and regulations.

A mandatory prebid job site meeting will be held December 21, 2010, 10 a.m., in front of the Cruise Terminal at the Philadelphia Naval Business Center, 5100 South Broad Street, Philadelphia, PA at 10 a.m.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 10-2389. Filed for public inspection December 10, 2010, 9:00 a.m.]

STATE BOARD OF DENTISTRY

In the Matter of the Application for Permanent Certification to Practice as an Expanded Func- tion Dental Assistant of Geraldine M. Donohue; Doc. No. 2159-46-10

On November 18, 2010, Geraldine M. Donohue, unlicensed, of Lansdowne, Delaware County, had her application to practice as an expanded function dental assistant denied based on findings that she is unable to practice as an expanded function dental assistant with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of controlled substances, chemicals or other type of material, or as the result of any mental or physical condition.

Individuals may obtain a copy of the adjudication by writing to Sabina I. Howell, Board Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the State Board of Dentistry's (Board) final decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court, must serve the Board with a copy of their petition for review. The Board contact for receiving service of the appeals is the previously-named Board counsel.

PHILIP T. SIEGEL, DDS,
Chairperson

[Pa.B. Doc. No. 10-2390. Filed for public inspection December 10, 2010, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

Bureau of Professional and Occupational Affairs vs. Alfreda B. Bradford; File Nos. 07-56-11591, 08-56-03325

On October 5, 2010, Alfreda B. Bradford, license nos. AB060443L, RM060443A, RM420081 and RS130207A, of Glenside, Montgomery County, had her licenses revoked based on her acting as a real estate broker in violation of a previous State Real Estate Commission (Commission) order, for violating escrow requirements, making substan-

tial misrepresentations in the practice of real estate sales and in a real estate transaction, and for conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency.

Individuals may obtain a copy of the order by writing to Judith Pachter Schulder, Board Counsel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649.

This final order represents the Commission's final decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court, must serve the Commission with a copy of their petition for review. The Commission contact for receiving service of the appeals is the previously-named Board counsel.

JOSEPH TARANTINO, Jr.,
Chairperson

[Pa.B. Doc. No. 10-2391. Filed for public inspection December 10, 2010, 9:00 a.m.]

Bureau of Professional and Occupational Affairs vs. Raquel Hester; File No. 08-56-06575

On September 27, 2010, Raquel Hester, license no. RS229217, of Philadelphia, Philadelphia County, had her license revoked based on her conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness, or incompetency and for making multiple substantial misrepresentations and failing to deal honestly and in good faith.

Individuals may obtain a copy of the order by writing to Judith Pachter Schulder, Board Counsel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649.

This final order represents the State Real Estate Commission's (Commission) final decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court, must serve the Commission with a copy of their petition for review. The Commission contact for receiving service of the appeals is the previously-named Board Counsel.

JOSEPH TARANTINO, Jr.,
Chairperson

[Pa.B. Doc. No. 10-2392. Filed for public inspection December 10, 2010, 9:00 a.m.]

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CRANE OPERATORS

[49 PA. CODE CH. 6]

Crane Operators; Initial Rulemaking

The State Board of Crane Operators (Board) adopts Chapter 6 to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The Board will make applications available through its web site after the final-form rulemaking has been approved by the Office of Attorney General; however, licenses will not be issued until the final-form rulemaking is published in the *Pennsylvania Bulletin*.

Statutory Authority

This final-form rulemaking is authorized by sections 302 and 2102 of the Crane Operator Licensure Act (act) (63 P. S. §§ 2400.302 and 2400.2102).

Background and Need for the Regulations

Section 2102 of the act requires the Board to promulgate regulations. Section 302 of the act directs the Board to regulate and enforce the act. Accordingly, the Board developed a comprehensive regulatory scheme to implement and effect the General Assembly's intent as manifested by the act.

In the proposed rulemaking published at 40 Pa.B. 3041 (June 5, 2010), the Board provided an extensive discussion of several important background topics to explain the rationale and history of the act. Those subjects included the legislative history, historical background, the American Society of Mechanical Engineers (ASME) standards and the origins of crane operation standards, industry and regulatory trends and explanatory notes about the ASME B 30 Standards. There is no need to repeat a discussion of those subjects at length in this final-form rulemaking, and the Board incorporates that discussion by reference in this final-form rulemaking.

One important development occurred after publication of the proposed rulemaking. As the Board predicted and planned, the Occupational Safety and Health Administration (OSHA) announced the promulgation of a final rulemaking amending 29 CFR Part 1926 (relating to safety and health regulations for construction) on July 28, 2010, published at 75 FR 47906 (August 9, 2010). Several commentators, including the Independent Regulatory Review Commission (IRRC), the International Union of Operating Engineers and the Associated Petroleum Industries of Pennsylvania (API), urged the Board to defer promulgation of its final-form rulemaking until after OSHA's new construction rules for cranes were issued. There was some concern that the Board's regulations could conflict with OSHA's regulations. Comments urging deferral were filed before OSHA announced the publication date of the crane regulations. Therefore, the comments were speculative and based upon the commenta-

tors suggesting the possibility of a conflict between OSHA and the Board's final-form rulemaking.

In fact, the Board closely monitored the OSHA regulations during the development of the proposed rulemaking and was confident that the proposed rulemaking would be consistent with OSHA's regulations. Upon review of OSHA's regulations on July 28, 2010, the Board's position was borne out. OSHA expressly provided that any state licensing law that meets its regulatory requirements would be enforceable and not preempted. See 29 CFR 1926.1427(a)(1) (relating to operator qualification and certification). Furthermore, employer audited certification programs would not be compliant with OSHA regulations in Pennsylvania because the Commonwealth has a licensing program that meets OSHA's construction regulation standards.

Based upon the same Federal regulatory authority previously cited, as well as the lack of statutory authority in the act and the lack of portability that is a feature of an employer audited certification program, the Board concluded that it cannot recognize these certification programs. The Board also took into consideration the fact that employer audited certification programs restrict labor market competition because it limits a crane operator's ability to leave one employer and operate a crane for another employer.

Summary of Comments and Board's Response

The Board received 33 separate written public comments from 31 individuals. One individual submitted three written comments and joined a fourth. Of the 33 comments, 25 raised only objections to §§ 6.51–6.56 (relating to certifying organizations) and the definition of "certifying organization" in § 6.2 (relating to definitions). Nearly all of these commentators are affiliated with one of three potential certifying organizations, including Crane Institute Certification (CIC), National Center for Construction Education and Research (NCCER) and Operating Engineers Certification Program (OECF).

Four commentators, including representatives of the National Commission for the Certification of Crane Operators (NCCCO), officers of Stephenson Equipment, Inc. and North Shore Crane Corporation, supported the proposed rulemaking without modification. A fifth commentator representing the American National Standards Institute (ANSI) addressed only issues of accreditation regarding §§ 6.51–6.56 and was neutral as to the content and substance of the proposed rulemaking.

Three commentators addressed a broader range of provisions in the proposed rulemaking that pertained to particular industries. API raised several issues regarding the jurisdiction of the Board and the application of the regulations to the petroleum industry, a second commentator, the Pennsylvania Coal Association (PCA), was focused on the coal industry, and a third commentator, Pennsylvania Power & Light (PPL) was focused on the electric power generation industry.

The Board also reviewed written legislative comments. The House Professional Licensure Committee (HPLC) commented on the certifying organization provisions, as well as implementation issues. Senator Waugh commented on provisions relating to licenses without certification.

IRRC submitted written comments on August 5, 2010, which the Board duly considered.

In addition to written comments, the Board also solicited and received extensive oral comments. On June 16, 2010, Acting Secretary Basil L. Merenda, Board counsel and other staff from the Department of State met with representatives of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). At the request of CIC, on June 29, 2010, three Board members and Board counsel heard from CIC representatives Paul Zorich, Anthony Brown and John Giannelli. On June 30, 2010, two Board members and Board counsel participated in a telephone conference call with John Giannelli, James Kendzel of the Institute for Credentialing Excellence (ICE), the parent organization of the National Commission for Certifying Agencies (NCCA), and Debbie Dickinson of CIC. Finally, on July 28, 2010, 3 professional Board members conducted a lengthy public work session with 24 members of the public, including representatives of PPL, CIC, NCCER and others whose principal interest related to the subject of certifying organizations. The HPLC was also represented at the public work session.

Finally, on August 10, 2010, the Board conducted a public meeting to consider all public comments, both oral and written, and to revise the proposed rulemaking and adopt a final-form rulemaking. Persons who submitted written comments were provided with notice of the meeting, provided with a copy of a working draft of the revised rulemaking and invited to participate. Fourteen members of the public attended and participated, including Anthony Brown, Debbi Dickinson and John Giannelli; Elizabeth Nadeau representing the International Union of Operating Engineers; James Kendzel; Dr. Roy Swift of ANSI; and Graham Brent of NCCCO. The participants provided the Board with additional oral comments to clarify and inform the Board on several topics.

General Provisions

§ 6.1. Findings and purpose.

The Board added subsection (b)(6) to identify another purpose of the regulations as preserving the value of crane operator certification. This paragraph was added after the Board considered public comments on the subject of accreditation. In particular, the Board reviewed written and oral comments submitted by James Kendzel of the ICE, the parent organization of NCCA, as well as Dr. Swift of ANSI.

The Board had extensive discussion about the comparability of certification offered by different certifying organizations. There was a consensus that certification offered by one organization should be equivalent to the certification offered by another. The participants did not want a system in which crane operators shop for the easiest test to pass and there is universal agreement with the principle that safety is jeopardized if crane operator certification is debased by invalid assessments. The Board concluded that it is necessary to assure that crane operator certification offered by multiple certifying organizations have equal merit. In other words, a person who relies upon crane operator certification must be able to rely upon the fact that the certification offered by one organization is as valid as another in measuring the threshold competency of crane operators.

§ 6.2. Definitions.

In the definition of "certification" and throughout the remainder of the regulations, the Board referenced applicable provisions of ASME B 30 for the sake of brevity and to keep the regulations current with industry standards.

API remarked that this constitutes an improper delegation of legislative authority to a private body under *State Bd. of Chiropractic Examiners v. Life Fellowship of Pennsylvania*, 272 A.2d 478 (1971). The Board considered this argument and determined that it is without merit. The case cited by API is not applicable because *State Bd. of Chiropractic Examiners* involved a provision of the Chiropractic Registration Act of 1951 that conferred a benefit upon the Pennsylvania Chiropractic Society by requiring licensees to attend a conference sponsored by that organization as a condition of renewal of their licenses. In this final-form rulemaking, ASME does not receive remuneration or benefit of any kind. Therefore, a violation of Article II, Section 1 does not exist and an impermissible delegation of legislative authority has not occurred. Furthermore, section 703(a)(9) of the act (63 P. S. § 2400.703(a)(9)) specifically authorizes the Board to take disciplinary action for unprofessional conduct, which includes "...departure from or failing to conform to operating practices or professional standards embraced by the crane operating profession, including those recognized by the American Society of Mechanical Engineers ASME B 30.5 and an agency of the Federal Government."

The more appropriate precedent is *Pennsylvania Medical Soc. v. Foster*, 137 Pa. Cmwlth. 192, 585 A.2d 595 (1991). In that case, the General Assembly used as a standard the Medicare rates promulgated by the Federal government, which, in turn, relied upon a private corporation, Pennsylvania Blue Shield, to determine reasonable charges for physicians' services. The court determined that an impermissible delegation of legislative authority did not occur. "While the legislature cannot delegate the power to make, alter, or repeal laws, it can delegate the power to determine some fact or state of things to form a basis upon which the law depends." *Pennsylvania Medical Soc.*, 137 Pa. Cmwlth. at 204, 585 A.2d at 600.

In this final-form rulemaking, the Board employs a Nationally recognized standard developed by ASME as a standard of practice for the operation of cranes. It is the same private industry standard that forms the basis for OSHA's regulations. This is similar to other licensing bodies and other regulatory agencies. For example, accountants are held to the standards of the American Institute of Certified Public Accountants in § 11.27 (relating to auditing standards and other technical standards) and Generally Accepted Accounting Principles established by the private Financial Accounting Standards Board. Certified real estate appraisers are bound by the Uniform Standards of Professional Appraisal Practice, as promulgated by the private Appraisal Standards Board of the Appraisal Foundation, in § 36.51 (relating to compliance with USPAP).

IRRC previously approved regulations that adopt industry standards. In 12 Pa. Code § 145.41 (relating to adoption of standards), the Department of Community and Economic Development has adopted as its standards for industrial housing components the ICC International Building Code, ICC International Mechanical Code, ICC International Plumbing Code, International Energy Conservation Code, National Electric Code (NFPA No. 70) and ICC International Residential Code. The Department of Labor and Industry already employs the standards of ASME for boilers or unfired pressure vessels (see section 2 of the Boiler and Unfired Pressure Vessel Law (35 P. S. § 1331.2)) and as part of the Uniform Construction Code in 34 Pa. Code § 405.2 (relating to standards). Other departments referencing ASME standards include the Department of Education (school building construction

standards), the Department of Environmental Protection (aboveground storage tanks) and the Department of Transportation (compressed and liquefied gas fuel systems). Based upon the foregoing precedents, the Board concludes that the General Assembly's reference to ASME standards is lawful and, therefore, the Board correctly uses that language.

Furthermore, the Board would argue that reference to ASME is sound as a matter of policy. Alternatively, the Board would need to replicate comprehensive standards of crane operation that cover the same subject matter for which ASME has existing standards. ASME is able to bring much more expertise and experience to these issues than the Board. In addition, ASME standards are already familiar to practitioners in the industry.

IRRC offered a related comment on the Board's reference to "applicable requirements of ASME B 30" in the definition of "certification." IRRC incorrectly describes this as a deviation from the act. As the Board explained in the preamble to the proposed rulemaking, "...the types of cranes currently covered under [ASME B 30.3, B 30.4, and B 30.5] may be, and, in fact, are expected to be, covered by other volumes in the future. In particular, ASME B 30.29, Self-Erecting Tower Cranes, is expected to be published in 2011."

Since the Board's adoption of the proposed rulemaking, an additional change occurred to ASME Volume B 30.4, which formerly covered portal cranes, pedestal cranes and some types of construction tower cranes. In 2010, ASME revised B 30.4 to exclude construction tower cranes. As a result, the two types of cranes that remain in B 30.4, portal cranes and pedestal cranes, are not covered under the Board's jurisdiction under the act. Portal and pedestal cranes are not included in the act's definition of "crane." All tower cranes that are subject to the Board's jurisdiction are now covered in ASME Volume B 30.3. For this reason, the Board deleted B 30.4 from the definition of "crane" to avoid confusion in the industry that the Board is issuing licenses for pedestal cranes or portal cranes.

The clear legislative intent was to cover the mobile cranes and construction tower cranes that are described in the act, which were covered by Volumes B 30.3, 30.4 and 30.5 at the time of enactment. IRRC's position appears to be that the Board's statutory jurisdiction over those types of cranes can be eliminated if ASME changes the numerical designation of its standards or reorganizes its codes and standards. To be more specific, it appears that IRRC has taken the position that the Board would no longer have jurisdiction over self-erecting tower cranes in 2011 unless the General Assembly amends the act to specifically include self-erecting tower cranes and that the act requires licensure of pedestal cranes and portal cranes in Volume B 30.4.

If the Board were to adopt this position, it would mean that the General Assembly would be required to amend the act each time ASME changes its standards. This has implications not only for the Board's jurisdiction, but also for the standards of practice. The Board previously noted in its preamble to the proposed rulemaking that ASME has publication cycles. The Board expects that there will be revisions to at least one of these three volumes in 2010, 2011, 2012, 2014 and 2015. Adoption of IRRC's position would require nearly annual revisions of the act to keep the law current with ASME standards. In addition, each amendment to the act would result in another amendment to the regulations, which would mean a perpetual rulemaking process. The Board respectfully disagrees with the notion that the General Assembly's

intent was to amend this act in 5 out of the next 6 years, or alternatively, to lose currency with standards in the industry.

Finally, to follow this suggestion would unreasonably inhibit commerce by establishing a Pennsylvania standard that is unpredictable. Instead of following Nationally established standards that are revised on a predictable schedule through an open, well-established process of experts in the field, contractors and crane operators would need to follow frequent changes in the act and regulations, which may or may not occur on a predictable timetable, and which may or may not occur contemporaneously with the revisions to ASME standards. The Board's approach is better because it references applicable ASME standards, which have been the standard in the industry since 1916. The Board's approach places licensees on notice to remain current with accepted National standards of practice in crane operations that occur on a predictable basis, are well-publicized in the industry and known to prime contractors and professional engineers and sustain the subject matter jurisdiction intended by the General Assembly. IRRC's position does not.

The term "certifying organization" was adopted to encompass NCCCO and any other body approved by the Board to issue certification. Contrary to the comments that the Board's proposed rulemaking was a "single source" regulation, it was the intent of the Board to have a "multiple source" regulation as demonstrated by the definition. The Board's expectation that multiple certifying organizations would meet the Board's standards and be approved was implicitly recognized by the heading of §§ 6.51—6.56, "Certifying Organizations," which reflects the Board's conscious adoption of the plural.

The most frequent comment received by the Board was objection to the requirement of dual accreditation by ANSI and NCCA as set forth in subparagraph (ii) of the definition of "certification." On this issue, the Board has the benefit of receiving the input of the HPLC and the SCP/PLC in response to the proposed rulemaking. Based upon the expertise provided by the staffs of the HPLC and the SCP/PLC, the Board has been advised and accepts as authoritative the statutory construction that the legislative intent was to require only one form of accreditation for a certifying organization. Accordingly, the Board revised the definition of "certification" by replacing "and" with "or." A prospective certifying organization will only be required to hold accreditation from either ANSI or NCCA.

API also suggested that the acronym "NCCCO" did not apply uniquely to the National Commission for the Certification of Crane Operators, but to all certifying organizations. That point appears to be based upon the erroneous insertion of the acronym into the pamphlet law edition after the words "State Board of Crane Operators" in the definition of "certification." The Board's research reveals that the enrolled bill enacted into law by the General Assembly only uses the acronym "NCCCO" on one occasion in section 506 of the act (63 P. S. § 2400.506). The insertion of the acronym into the pamphlet law appears to be an erroneous editorial addition. The Board's position is that "NCCCO" applies only to the National Commission for the Certification of Crane Operators and to no other organization or entity.

With respect to other aspects of the regulations pertaining to accreditation and certifying organizations, the Board discusses those issues more fully in response to §§ 6.51—6.56.

The Board discussed extensively the comments of the PCA recommending that the provisions of the Surface Mining Conservation and Reclamation Act (SMCRA) (52 P. S. §§ 1396.1—1396.19a) be used as the basis for defining this exclusion. The PCA correctly noted in its comments that the SMCRA is an environmental regulation. In section 1 of the SMCRA (52 P. S. § 1396.1), the stated purpose is to provide "...for the conservation and improvement of areas of land affected in the surface mining of bituminous and anthracite coal. . . ." Unlike the Federal Mine Safety and Health Act of 1977 (30 U.S.C.A. §§ 801—965), the SMCRA is not a workplace safety statute.

In addition, the Board also noted that much of the activity that the PCA wants to exempt is already excluded by the Board's proposed rulemaking. In particular, "activities whereby coal is extracted" would be covered by the Board's definitions, which includes the definition of "coal mining" as "the extraction of bituminous coal, lignite or anthracite. . . ."

It appears from the PCA's comments that it seeks an exclusion for activity and work that is not, strictly speaking, the mining or extraction of coal, but which is incidental to coal mining, or which happens to occur on the premises of a coal mine. The Board parts company with the PCA's rationale at this point. Understandably, the Department of Environmental Protection would adopt an inclusive definition of "coal mining" under the SMCRA so that it could comprehensively regulate environmental harms such as runoff, drainage, erosion or subsidence that may not arise from actual coal mining operations, but from ancillary work surrounding the coal mine. For purposes of protecting the environment, the Department of Environmental Protection would clearly have reason to regulate the environmental effects of crane operation that occur at a coal mine.

The rationale for a broad definition of "coal mining" does not apply when the subject matter is safety of work activities that are not involved directly in the extraction or preparation of coal. Whether intended or not, the effect of the PCA's recommendation would be to create an exemption for which there would not be specific standard for the qualification of crane operators when their work is only tangentially related to coal mining. The standards for crane operator qualification in 30 CFR 77.404(b) (relating to machinery and equipment; operation and maintenance) represent a bare minimum: "Machinery and equipment shall be operated only by persons trained in the use of and authorized to operate such machinery or equipment," cited by *Speed Mining, Inc. v. Secretary of Labor, MSHA*, 2007 WL 2746692 (2007). The language in 30 CFR 77.404 has remained unchanged since 1971. These standards are incorporated by reference in 25 Pa. Code §§ 209a.4 and 209a.13 (relating to safeguards for mechanical equipment; and competent person).

API argued for a broad exemption of the petroleum industry. The Board considered that position but rejected it for several reasons. First, there is nothing in the act on which an exemption could be based.

Second, API misconstrued the Board's comments with respect to the definition of "derrick." The act expressly includes "derricks." The aim of the Board was to make the act's use of "derrick" consistent with ASME standards, not to recognize an exemption for the petroleum industry. The preamble to the proposed rulemaking makes that point clear. The Board's position is consistent with ASME B

30.5, which expressly states that it does not apply to well-drilling derricks. See ASME B 30.5, Section II, page ix.

Third, API misconstrues the act and the Board's reference to OSHA's new regulations in 29 CFR 1926.1427. In contrast to OSHA's construction industry standards governing the use of cranes in construction, the act is quite explicit in its reliance upon ASME B 30 as the standard for determining which types of cranes are subject to the Board's jurisdiction. ASME B 30 applies to cranes regardless of the industry or particular purpose for which the crane is used. ASME B 30 is not a construction industry standard. It is a crane standard and the provisions regarding operator qualifications apply to the use of these machines even when they are not used for lifting service. See ASME B 30.5, Section 5-0.1, page 1.

For these reasons, the Board rejected a definition of "crane" or "engage in the operation of a crane" that would exempt the petroleum industry.

At the request of IRRC, the Board included a definition of "declaration." The Board must have a means of designating which type of crane may be operated with a license that is granted without certification. The declaration is a written designation identifying the type of crane (tower, lattice boom crawler, lattice boom truck, telescopic boom with rotating control station or telescopic boom with fixed control station) that the licensee is authorized to operate.

The Board also revised the definition of "intermodal operations." The Board revised the phrase "other intermodal operations" to simply "intermodal operations" in the definition of "crane." Since the phrase "other intermodal operations" does not appear elsewhere in the regulations, it has been deleted from § 6.2.

§ 6.22. *Licensure without certification by practical examination.*

Several commentators objected to the limitation that only the practical examination administered by NCCCO would be accepted for obtaining a license under section 506(b)(2) of the act. Several arguments were offered in support of accepting passing scores from multiple certifying organizations. The Board notes that the act is explicit on this point. As discussed previously, "NCCCO" was used in the enrolled bill only once and it was in this provision of the act. For the reasons in the discussion of § 6.2, the contention that this acronym is meant to apply generically to all certifying organizations has been rejected and the Board has concluded that the act only allows NCCCO's practical examination to be accepted for licensure under this provision.

Beyond this clear statutory directive contradicting the commentators' position, the Board also considered the merits of other arguments advanced by the commentators. One common argument is that "single sourcing" or "sole sourcing" is unfair, irrational or unusual (Debbie Dickinson, June 17, 2010; Keith Morical, July 6, 2010; Cliff Dickinson, July 1, 2010.) First, the Board rejects the description of the proposed rulemaking as "single sourcing" as being misinformed and erroneous. In fact, with respect to certifying organizations for licenses issued under section 501 of the act (63 P. S. § 2400.501), as discussed previously, both the act and the proposed rulemaking did not have a limitation on the number of organizations that would be approved, provided that the criteria were satisfied. With respect to section 506 of the act, the act establishes a uniform standard, and this particular provision in the act is quite typical of licensing statutes and not unfair, irrational or unusual.

The Board reviewed the licensing statutes for the other 28 licensing boards in the Bureau of Professional and Occupational Affairs (BPOA). A single testing and certifying body is the norm. Multiple testing and certifying organizations are rare. With a few notable exceptions, such as massage therapists, which identifies two certifying organizations by act, and professional counselors who may take examinations offered in different disciplines, virtually every other license, from barbers to physicians, is granted subject to passing a test administered by one recognized National body. Even licenses such as clinical nurse specialist, professional counselor and certified registered nurse practitioner typically allow only one examination for each specialty. In most cases, that testing body is a private, nonprofit corporation whose members consist of state licensing boards. In one case, accountancy, the test is developed and administered by a private professional membership organization, the American Institute of Certified Public Accountants. Several nursing specialties are based upon a single private organization that is the selected testing body. This norm is reflected in other professions, notably attorneys, and it is also the generally accepted practice among licensing bodies in the other 49 states and the District of Columbia.

The rationale for this policy is straightforward. In licensing individuals to practice a profession or occupation, the Commonwealth has an interest in being certain that the same yardstick has measured each individual who holds a license. That interest is assured if each licensee shall pass the same entrance examination. When there are multiple tests, there are multiple yardsticks and comparing the relative difficulty of examinations becomes a matter of debate and opinion. One test eliminates that problem. Therefore, the provisions of section 50(b)(2) of the act are rational.

Other commentators argued that identifying a single organization by name was evidence of bias, favoritism or support for a monopoly (Victor Stutzman, June 17, 2010; Debbie Dickinson). The objective evidence flatly contradicts that argument. NCCCO is the first crane operator certification organization in the United States. Until September 1, 2008, only 40 days prior to passage of the act of October 9, 2008 (P.L. 1363, No. 100), it was the only accredited crane operator certification program in the Nation. Accordingly, the General Assembly properly identified in the act the only crane operator certification offered in the United States from the time that Senator Erickson introduced the first bill in 2004 until the time that Representative Civera's bill approached final passage 4 years later.

NCCCO's status as the original source of crane operator certification is well-documented by OSHA. As early as March 13, 1997, OSHA was presented with a report on NCCCO's activities and standards. It was during that report that the recommissioning of the working group to revise and update construction crane regulations was announced. A byproduct of that study and discussion was the creation of the Crane and Derrick Negotiated Rule-making Advisory Committee (C-DAC) and the negotiation and promulgation of OSHA's most recent crane regulations on July 28, 2010. See Testimony of William Smith to the Advisory Committee on Construction Safety and Health (ACCSH), OSHA, United States Department of Labor, Thursday, March 13, 1997.

Some commentators have argued that the Board's proposed rulemaking implies that NCCCO is a "benchmark" (Debbie Dickinson, June 10, 2010) and that NCCCO is not an "industry standard" (Dickinson, June

10, 2010; Anthony D. Brown, July 2, 2010; Paul S. Zorich, July 6, 2010). Notably, nothing in the annex or preamble of proposed rulemaking stated that NCCCO was an industry standard or benchmark. The Board only stated that NCCCO is a certifying organization that is recognized by statute. As has been explained, that is commonplace in the legislative and administrative process. The Board has never suggested that NCCCO certification is mandated by OSHA regulations or that it is the only certification that will be accepted under the act or this Board's regulations. However, the history of crane operator certification shows that NCCCO served as an archetype and that OSHA and the General Assembly knew of NCCCO's standards when criteria for certification were determined. One commentator, Anthony Brown, was the author of the OSHA voluntary agreement with NCCCO in 1999. As an official of OSHA, he addressed ACCSH and informed the group that "[NCCCO] developed testing criteria both written and practical, qualification criteria for crane operators." See Testimony of Anthony D. Brown, "Special Presentation by the National Commission for Certification of Crane Operators to ACCSH," June 10, 1999, <http://www.osha.gov/doc/acsh/transcripts/ac99610.html>. Anthony Brown's presentation described the history of crane operator certification beginning with an OSHA review of crane accidents in 1990, followed by the creation of crane operator certification criteria by the Specialized Carriers and Riggers Association, which formed NCCCO.

The General Assembly's requirement of the NCCCO practical examination under section 506 of the act is reasonable and sound in light of the legislative history and background of the act. Accordingly, the Board will follow that clear directive.

§ 6.23. License without certification by experience.

The Board considered carefully Senator Waugh's comments regarding the comparison with West Virginia's requirement of 2,000 hours in a 4-year period. On the same issue, PPL took the position that the requirement was too stringent. Another commentator, Ronald G. Havlick of OECP, appeared to take the contrary position that the Board should prohibit licensure without certification. Ronald G. Havlick also appears to have misunderstood the Board's comments with respect to reporting of failing scores for persons who apply for licensure under § 6.22 or § 6.23 (relating to licensure without certification by practical examination; and licensure without certification by experience).

The Board struggled with the number of hours to be required under § 6.23. While the Board was aware of West Virginia's requirements, the Board does not believe that West Virginia's requirements are adequate. The Board also took into consideration the difference between West Virginia and this Commonwealth. West Virginia is a smaller state with fewer crane operators and does not have large metropolitan areas with concentrated buildings and population. Therefore, the risk of harm that could occur is less in West Virginia. Also, the reason for certification is that experience has proved to be an unreliable indicator of competence, because reading and math skills are critical to safe crane operation, as Ronald G. Havlick observed and as C-DAC found in its study of crane operations that led to the adoption of OSHA's crane standards. In addition, the Board realized that documentation to support experience is limited, an opinion confirmed by PPL at the public work session on July 28, 2010.

The Board also considered the legislative history. The purpose of this provision was to provide for individuals who are highly experienced and who have made a career as a crane operator and not to license part-time or itinerant crane operators. Therefore, the 5,000-hour threshold was already a compromise. Furthermore, at the public meeting on August 10, 2010, the Board received the comments of Dr. Swift of ANSI. Dr. Swift advised the Board that "skill atrophy" occurs rather quickly in all occupations and professions, including crane operation. He said that even a person who has many years of experience will begin to experience a degradation of skill after a relatively brief period away from daily practice. Therefore, even a quantity of 5,000 hours of crane operating experience during a 5-year period may be insufficient to maintain skills at a safe level. There was a consensus expressed by the public participants on this point.

In light of the inadequacy of experience as evidence of competence, the lack of documentation to support claims of experience, the greater risk of harm in population centers and the need to have a sufficient amount of experience for each type of crane for which a license is issued, the Board is cautious in a move to lower the threshold below 5,000 hours. The West Virginia standard, which amounts to 500 hours of crane operation per year, essentially licenses a person who is not a full-time crane operator, which runs contrary to the legislative intent behind the act. In addition, professional members have had the opportunity to observe first-hand the performance of workers who only operate cranes on a part-time basis and based upon their collective experience concluded that there is reason to be concerned about the skill level and safety of part-time crane operators.

On this point, the Board had a lengthy dialogue with PPL at its public work session and explored a variety of alternatives. That discussion confirmed the Board's concerns. There is a mindset in general industry that a "go-slow" approach to operating a crane is a substitute for skill. That point arose when commentators argued that the timed practical examination does not test their skills. That is incorrect. The experience of professional crane operators and the psychometric outcomes of certification tests validate the principle that timed practical tests require a higher level of skill and control over the crane's functions. Timed practical tests are not measuring efficiency or speed, but control. Therefore, while it is prudent to take as much time as necessary to perform an operation safely, it is not a substitute for skill and ability. In light of these factors, but also considering the valuable input from Senator Waugh and not wishing to create undue hardship on individuals, the Board reluctantly lowered the number of required hours to 4,000 over a 5-year period with the understanding that the only experience that would be counted would be time spent "in the seat," that is, actually operating a crane and not to include crane-related activities. The Board believes that a truly experienced crane operator will be able to demonstrate that level of experience. Alternatively, persons who are not certified will be able to pursue licensure under section 506(b)(2) of the act and § 6.22 by passing a practical examination.

PPL and the Board also discussed several other questions that were raised in the public comments. The term "immediately preceding" was explained to the satisfaction of the commentators as a period that begins 5 years prior to the date on which the application is filed. Regarding the request for reporting to employers, the Board explained that it does not have the authority to require

licensees to report criminal proceedings to their employers, but reporting may be a condition of employment for a crane operator. Also, the Board pointed out that one possible requirement in an adjudication of disciplinary actions is a requirement that the licensee inform an employer of disciplinary sanctions.

Ronald G. Havlick disputed the requirement for reporting failures on certification examinations. The Board wants to make it clear that this requirement only applies to persons who apply for a license under § 6.22 or § 6.23. The Board agrees that a person who has been successfully certified and who applies for a license under § 6.11 (relating to general requirements) does not need to report failing scores.

§ 6.31. Duration of license.

IRRC recommended that the final-form rulemaking specify the biennial renewal date. The Board has been advised by the BPOA that the renewal date will be determined administratively and that the date will be published on the license application forms and on the licenses. Renewal notices are mailed to licensees prior to the expiration dates of licenses. IRRC has previously approved regulations that do not specify a renewal date.

Certifying Organizations

§§ 6.51—6.56

As discussed under § 6.2, the Board relies upon the staff of the HPLC and the SCP/PLC for the authoritative interpretation that the legislative intent was to require accreditation from no more than one organization, either ANSI or NCCA. The Board notes, however, that while some commentators argued that the two forms of accreditation are the same, both ANSI and NCCA reported that there are important differences. The Board agrees.

The Board acknowledges that both organizations require a job analysis and psychometric validation of assessments that measure a person's ability to perform certain tasks within that job analysis. In that respect, the two organizations are similar. Likewise, both organizations recognize that there is a conflict of interest between training and certification, but allow for training programs to be affiliated with certification programs if there are firewalls or safeguards to protect the integrity of the certification process. On these important points the Board acknowledges that ANSI and NCCA satisfy the legislative intent to accredit certifying organizations.

Nonetheless, the two organizations do not overlap in all respects that the Board believes are important to protecting the public interest. NCCA pointed out that it requires that accredited organizations must include on the governing board persons who are not consumers of the certification that the organization offers. The Board believes that public representation on governing bodies is very important to making certifying organizations accountable and transparent. The Board believes that certifying organizations would benefit from input of people outside the crane industry. Based upon their experience in this rulemaking process, the professional members of the Board believe that public members of the Board have contributed thoughtful and important perspectives and ideas to the Board's rulemaking process that professional members would not have been able to offer. Public participation in crane safety is valuable.

The Board believes that ANSI's practice of onsite evaluations of its accredited organizations is valuable and that it is an important difference. The Board had an extensive dialogue with James Kendzel of ICE. He con-

firmed that NCCA's procedures cannot independently discover a discrepancy between written policies and actual practices prior to the occurrence of a violation or a problem. Based upon that information, the Board concludes that in the absence of onsite evaluations, there is a greater risk that a certifying organization will not conform to its written policies and that nonconformities will not be discovered by an accrediting body until after a problem arises. Contrary to the claims of some commentators, there is not a comparable alternative to first-hand examination by a certifying organization. The Board agrees that alternative methods of auditing are accepted by NCCA to confirm a certifying organization's practices, but they are not the same. The Board agrees that ANSI's additional requirements are more costly and they are more difficult to attain, but the Board believes that they serve a legitimate purpose and they provide an additional degree of quality and protection.

Also, James Kendzel acknowledged that ANSI accreditation is more widely recognized and accepted internationally. ANSI is the only organization that itself is accredited under ISO Standard 17011 and it is the only organization that accredits other organizations according to ISO Standard 17024. The Board also notes that NCCA has applied for and has received accreditation from ANSI. Some commentators took exception to the Board's comment in the preamble that NCCA's standards are minimal. The Board did not intend its preamble to be interpreted negatively toward NCCA or to mean that NCCA is not a quality organization, but the Board continues to believe that ANSI is a more rigorous and demanding accreditation standard, not simply a more costly standard.

The Board found one problem in both organizations after receiving lengthy input from ANSI and NCCA. Both organizations require a certifying body to perform a job analysis or practice analysis to determine what types of skills or competencies must be measured. That analysis is based principally upon a survey of experts in the field, in this case, the crane industry. In a simplified version, in a job analysis industry the experts describe how the job is performed in real life. This is important because both ANSI and NCCA must rely upon the job analysis to judge the validity of the tests. Ordinarily, if two certifying bodies in the same field perform the job analysis correctly, they may develop slightly different assessment instruments, but each assessment instrument will still be psychometrically valid. The Board accepts that principle.

A problem arises, however, if one job analysis does not conform to a specifically prescribed requirement or standard in the industry. Because neither NCCA nor ANSI are experts in the fields that they accredit, they have no means to confirm independently that the industry experts have conformed their views to prescribed standards if the experts depart from those standards. As a result, the differences in certification examinations can be significant. That appears to have happened in crane operator certification. The Board notes that although ANSI does explicitly require its accredited organizations to comply with standards such as ASME B 30, the evidence demonstrates that ANSI's lack of expertise in the crane industry may have led to an oversight with respect to the interpretation of ASME standards. NCCA does not explicitly require adherence to ASME standards if the job analysis does not insist upon it.

Specifically, ASME issued two interpretations of its standards that expressly prohibit the use of calculators in certification tests. These are authoritative statements

from ASME on the requirements under its standards. See ASME Interpretation 5-61, issued July 15, 1997: Does the use of a computer, calculator, or other device satisfy the requirement to "exhibit arithmetic skills" (under Paragraph 5-3.1.2(b)(3))? Reply: No. Also, see ASME Interpretation 5-75 confirming Interpretation 5-61. While the Board does not dispute that in real life crane operators normally use calculators to perform their load chart calculations, the ASME requirement is clear and unequivocal.

Second, ASME issued an interpretation that to be certified on a particular type of crane, the crane operator shall have passed a practical exam for that type of crane. See ASME Interpretation 5-58, issued October 12, 2004: Does the operator being tested need to successfully complete an operations test on any one crane in any of the groupings (1 through 10) to qualify him/her to operate any crane in that particular grouping, or must they demonstrate proficiency on every crane (make, model, capacity) to be operated? Reply: The operator only needs to complete an operation test on a specific type crane. The operator does not need to complete an operation test on each specific crane.

The Board believes that certifying organizations should conform to ASME interpretations of its standards. "Interpretations shall not revise existing requirements or establish new requirements." See ASME Codes and Standards Policy 33(c)(3). Thus, the correct reading of ASME Volume B 30.5 is that the use of calculators is prohibited and certification should only be issued by passing a practical examination for the specific type of crane that has been tested—lattice boom crawler, lattice boom truck, hydraulic boom with fixed station, hydraulic boom with rotating station, tower crane, and so forth.

Clearly, a certifying organization can reduce costs of certification if it requires only one practical test and certifying for many types of cranes. It would also be easier to pass a mathematics problem if the candidate can use a calculator. But if one certifying examination follows ASME standards and its interpretations but another does not, then the Board does not believe that the assessments offered by different organizations can be considered equivalent or comparable, even though from a psychometric standpoint those assessments may be considered valid based upon a job analysis. If one test is premised upon a job analysis that applies an industry standard, while another test is based upon a job analysis that does not, then the tests and the certifications are no longer equivalent. Although the Board may concede that calculator use may be a relatively minor issue, the reliance upon a single practical examination is not.

Some commentators argue that this is competition and that it leads to improvements in certification. In fact, it does the opposite. It has long been recognized as a principle in economics, known as Gresham's Law, that bad money drives out good money. This principle has been found to apply to government regulations too: lax standards drive out higher standards. Lax standards cost less in the short run. Businesses that follow stricter standards are at a competitive disadvantage with businesses that follow lax standards. See "The Market for Lemons: Quality Uncertainty and the Market Mechanism" by George Akerlof, 1970. This principle has been demonstrated with respect to environmental regulations ("Interstate Competition and Environmental Regulation: A Test of the Race-to-the-Bottom Thesis," Woods, N. D., Social Science Quarterly, Volume 87, Issue 1 (2006)) and workplace safety regulation ("State Enforcement of Federal Regulatory

Policy: The Lessons of OSHA,” Thompson, F. J., Scicchitano, M. J., *Policy Studies Journal*, Volume 13, Issue 3), among others.

Crane operator license regulations establish a form of exchange. A crane operator submits a certification and receives a license. By law, licenses issued by the Board must be of equal value and there is not an incentive in the licensing system to obtain the most stringent form of certification. A crane operator who does not use a calculator or who takes multiple practical examinations for each type of crane is no better off than the crane operator who uses a calculator or who takes a single practical examination and qualifies for multiple certification specialties. If it is easier to obtain one type of certification than another, then crane operators will take the shortest route to obtain a license.

In the end, if some sources of certification are easier to obtain than others, certification will not result in raising crane operator qualifications, but lowering them because crane operators will get the same benefit of licensure whether they obtain an easier certification or a harder one. From the beginning, the Board has tried to develop regulations to anticipate problems that do not exist today, but may develop in the future. The three certifying organizations that have submitted comments on Chapter 6 are known to the professional members of the Board and regarded as reputable members of the crane industry. However, in light of the vulnerabilities of NCCA and ANSI accreditation that the Board has described, the Board has always believed that it must establish clear standards that fill the gaps left by accreditation by a National accrediting body.

Without solid standards, future prospective certifying organizations may have an incentive to attract more candidates for certification by trying to develop a job analysis to change the tests and so the certification standards go lower. This is the race to the bottom and it would defeat the purpose of the act, as well as OSHA regulations.

Several commentators argued that crane operators should be given choices and options in certification. While the Board agreed with that principle from the beginning, the Board also believes that the public's right to choose trumps the crane operator's choice. The real question, from the Board's perspective, is what kind of certification would each citizen choose to protect public safety? Would members of the public choose certification testing that relaxes standards for the crane operator, or certification testing that maintains and raises standards? Would they choose the shortest route to certification, or the best one?

The Board believes that to prevent the race to the bottom, all certifications must be equivalent. Therefore, in addition to accreditation by ANSI or NCCA, plus the OSHA voluntary agreement, the Board requires that all certifying organizations apply the same ASME interpretations in developing assessments. This requirement is set forth in § 6.53(a)(5) (relating to required and discretionary bases for disapproval of an application as a certifying organization; bases for approval; and terms of equivalence to NCCCO). A similar requirement has been added for conformity with OSHA's operator qualification requirements in 29 CFR 1926.1427. After discussion with CIC, NCCER, OECF and NCCCO, the Board is satisfied that these requirements are consensus standards and that they will be met by all four organizations. Moreover, the Board argues that this regulation benefits all four organizations because no present or future certifying organization will gain an advantage in the future by starting the

race to the bottom. The Board has resolved the equivalence issue by specifying the four criteria that define equivalence to NCCCO: (1) accreditation by NCCA or ANSI; (2) OSHA voluntary agreement; (3) conformity to ASME B 30 standards and ASME interpretations of those standards; and (4) conformity with OSHA's regulations.

The Board incorporates these same criteria into its order granting approval to certifying organizations and as grounds for terminating approval.

Addendum

On October 26, 2010, the Board received a request from IRRC to more specifically respond to several comments that IRRC had submitted in response to its proposed rulemaking. The Board's responses to that request for more specific responses follows.

A request to ensure consistency with OSHA regulations

IRRC did not articulate any specific issues or areas of potential inconsistency with OSHA regulations, but cited other commentators' concerns. The two areas of potential or alleged inconsistency raised by other commentators applied to employer certifications and accreditation of certifying organizations.

With respect to the former issue, the Board has ensured from the beginning of drafting its proposed rulemaking that it was consistent with OSHA's regulations. It should also be noted that under the OSHA final rulemaking published at 75 FR 47906, crane operator qualification and certification requirements will not take effect until August 9, 2014. Therefore, there cannot be actual inconsistency between the Board's regulations and OSHA's regulations until that time.

Beyond the 2014 effective date for OSHA's final rulemaking, the Board reviewed the OSHA regulations and ensured that its own final-form rulemaking is consistent with OSHA. Notably, as previously discussed, OSHA provides in 29 CFR 1926.1427(a)(1) that when a state or local government requires licensure and the state or local licensure meets or exceeds OSHA's regulations, that the government license would be required under OSHA's regulation. Therefore, in this Commonwealth, employer certification would not be a valid form of crane operator certification and qualification under OSHA's final rulemaking.

When the Board's jurisdiction over cranes operations overlaps with OSHA's construction crane standards as provided in 29 CFR Part 1926, Subpart CC (relating to cranes and derricks in construction), the criteria for crane operator qualification and certification exceeds OSHA standards. The OSHA standards for government licenses are in 29 CFR 1926.1427(e)(2), regarding licensing criteria. Those criteria include that: (1) the requirements for obtaining the license include an assessment, by written and practical tests, of the operator applicant regarding, at a minimum, the knowledge and skills listed in 29 CFR 1926.1427(j)(1) and (2); (2) the testing meets industry recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel; (3) the government authority that oversees the licensing department/office has determined that the requirements in 29 CFR 1926.1427(e)(2)(i) and (ii) have been met; (4) the licensing department/office has testing procedures for relicensing designed to ensure that the operator continues to meet the technical knowledge and skills requirements in 40 CFR 1926.1427(j)(1) and (2).

Section 501 of the act requires as a condition of licensure with certification that applicants hold certifica-

tion issued by NCCCO or organizations that are equivalent to NCCCO. The Board's regulations require that those organizations have a voluntary agreement with OSHA and that those organizations apply industry standards, including ASME interpretations, regarding testing and certification. Those two requirements for certifying organizations ensure that the Commonwealth's licenses with certification under section 501 of the act meet or exceed OSHA standards. Therefore, the Board has, in fact, determined that the requirements in 29 CFR 1926.1427(e)(2)(i) and (ii) have been met.

The Board noted in the preamble to its proposed rulemaking and reiterates in this final-form rulemaking that licenses without certification under section 506 of the act do not meet the requirements set forth by OSHA. Therefore, individuals licensed under section 506 of the act would not be eligible to operate a crane in construction. Under the original standards for these licenses in the proposed rulemaking, the Board believed that it could make a reasonable argument to OSHA that given the rigorous experience requirements and documentation required by the Board, that OSHA should grant a waiver for these licenses. However, principally at IRRC's direction, the Board relaxed the experience requirement substantially and a request for a waiver no longer appears to be a viable option for licenses granted under section 506(a)(3) of the act. The Board will evaluate the merits of a request for a waiver in 2011.

OSHA's regulation also provides that a license issued by a government accredited crane operator testing organization that meets the requirements in 29 CFR 1926.1427(e)(2) is valid only within the jurisdiction of the government entity and that it is valid for no longer than 5 years. Since Pennsylvania licenses are only valid in this Commonwealth for 2 years, these requirements are satisfied too.

With respect to the second concern regarding accreditation of certifying organizations, the Board's proposed rulemaking ensured that it was in compliance with OSHA's rulemaking. The requirement in the proposed rulemaking for dual accreditation exceeded the OSHA requirements. OSHA did not forbid dual accreditation; therefore, dual accreditation was not inconsistent. Notwithstanding the merits of dual accreditation, as previously discussed, the Board revised this final-form rulemaking to require only a single accreditation by ANSI or NCCA, which continues to be consistent with OSHA's requirements.

Implementation procedures and timetables for compliance

The act will not be enforced until licenses have been issued. The Board published its applications for licensure and applications for certifying organizations and received approximately 200 license applications as of October 28, 2010, and three certifying organization applications. The Board reviewed all three certifying organization applications and conducted a dialogue with representatives of all three organizations at its meeting on October 27, 2010, to obtain clarification on several points.

The Board would stress that final determinations have not been made in any of these applications, but upon approval of the final-form rulemaking by IRRC, the Board would be prepared to meet in November 2010 to take final action on the applications. The administrative staff of the BPOA is prepared to print and issue licenses immediately upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*. A license application that has been received as of October 28, 2010, will be

able to be processed and, if the individual qualifies for a license and does not have a disabling criminal history, the applicant will be able to receive an active license no later than the date of publication in the *Pennsylvania Bulletin*. In fact, the Board and the BPOA have been prepared and have instituted procedures and plans to assure that a qualified applicant that files an application before the Board's next business meeting will have an active license on the date of publication in the *Pennsylvania Bulletin*.

The Board has also advised the three applicants for certifying organizations that if the applications are approved, an individual who has been certified by the organizations and who submits an application to the Board will be processed simultaneously with applicants who have been certified by NCCCO. Therefore, individuals certified by NCCCO will have no advantage over an individual who has been certified by another approved certifying organization. Each of the three certifying organizations has expressed satisfaction with the Board's announced plans.

With respect to enforcement of the act, the Board is not enforcing the act until the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin* and the BPOA has published its policy on the Board's web site. At the time of publication of that notice on the web site, it appeared that publication in the *Pennsylvania Bulletin* would not occur earlier than mid-December. Upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*, the Board will enforce the requirement of licensure for crane operators. The Prosecution Division of the Legal Office for the BPOA retains discretion on the appropriate enforcement measures to apply. Historically, when a new license classification has been implemented, persons who are otherwise qualified for licensure, but who are found to have overlooked or been unaware of licensure requirements and have no other violations, are given the opportunity to cure the violation by submitting an application and obtaining a license in the period of several months following implementation of the license classification.

Equivalence to NCCCO

In the preamble to the proposed rulemaking, the Board wrote "The use of the term 'equivalence' indicates the General Assembly's intent that the Board limit its approval to those other organizations that are point-by-point identical to NCCCO in relevant criteria, except for the fact of a separate corporate existence and control." Commentators, including IRRC, ignored the next paragraph, "Accordingly, the Board examined carefully the criteria that apply to NCCCO and that would be relevant to setting an objective standard of equivalence. Those criteria are more fully discussed in §§ 6.52 and 6.53 (relating to application for approval as a certifying organization; and required and discretionary bases for disapproval of an application for approval as a certifying organization)."

The argument that other organizations could not have the same address, or perform the same examination, or other irrelevant criteria and therefore would not be equivalent to NCCCO never appeared in the Board's regulations. The relevant criteria were specified in the proposed rulemaking and each and every relevant criterion was attainable by an organization that wanted to be approved. Contrary to IRRC's conclusion, in reality, NCCCO would not have been the only possible certifying organization. However, the Board has modified those relevant criteria and, to the satisfaction of the prospective certifying organizations and the General Assembly, the

Board satisfied the statutory requirement of equivalence to NCCCO in terms that other known certifying organizations regard as acceptable.

§ 6.53(a)(4) and (5)

These paragraphs did not conflict with OSHA's negotiated rulemaking, which established minimum standards that a government licensing body could exceed. Whether the prohibition was or was not consistent with the act is a moot point since those provisions have been deleted. In response to the hypothetical question of whether those provisions would have been inconsistent with the act and legislative intent, the Board was charged with promulgating and enforcing regulations, not inconsistent with the act, as necessary only to carry into effect the provisions of the act. See section 2400.302(5) of the act.

As more fully discussed in the preamble to the proposed rulemaking and the original preamble to the final-form rulemaking, the Board's mission to maintain a rigorous program of certification and qualification that is untainted by conflict of interest is a critical element of licensure. Far from being inconsistent with the act and legislative intent, regulations that advance that interest are essential to the proper administration of the act. Although a clear distinction between training and certification would have eliminated the potential for a conflict of interest, the Board relied upon the assurance offered by ANSI and NCCA that their standards and requirements can adequately safeguard against a conflict of interest affecting certification. Based upon those assurances, the Board deleted those requirements from the final-form rulemaking.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking should not have adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The final-form rulemaking does impose additional paperwork requirements upon the Commonwealth and the private sector, but those costs are consistent with and in furtherance of the act.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 25, 2010, the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 3041, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC 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 Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 3, 2010, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 4, 2010, and approved the final-form rulemaking.

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 the 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 amendments made to the final-form rulemaking do not expand the scope of the proposed rulemaking published at 40 Pa.B. 3041.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

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

(a) The regulations of the Board, 49 Pa. Code, are amended by adding §§ 6.1—6.4, 6.11—6.15, 6.21—6.23, 6.31—6.34, 6.41—6.44 and 6.51—6.56 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

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

ANTHONY J. LUSI, Jr.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 6752 (November 20, 2010).)

Fiscal Note: Fiscal Note 16A-7101 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 6. STATE BOARD OF CRANE OPERATORS

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GENERAL PROVISIONS

§ 6.1. Findings and purpose.

(a) The Board finds that:

(1) The improper operation of a crane may cause a catastrophic event on a work site, resulting in fatality, other bodily harm and property damage.

(2) Although any machine or man-made activity may cause fatality, other bodily harm or property damage, the magnitude of the loads borne by cranes, the associated tension and stress on structural elements of cranes, the motor power required to operate winches, the mobility of cranes and other factors that are peculiar to cranes, lead to exceptional hazards and risk of harm arising from crane operation that warrant additional regulation by the Commonwealth.

(3) Operator error is a significant cause of bodily harm and property damage arising from the use of cranes.

(4) A uniform standard of testing, certification and licensure as a prerequisite to admission to the occupation of crane operator is necessary to reduce the incidence of error and promote a higher degree of conformity to safe crane operation.

(5) Reduction of crane-related incidents will save lives, reduce bodily injury to the public and construction workers, reduce property damage, increase efficiency and raise productivity of businesses in this Commonwealth.

(b) The Board promulgates this chapter to:

(1) Protect people from bodily harm by reducing the incidence of operator error through a process of objectively measured testing, certification and licensure as a prerequisite to admission to the occupation of crane operator.

(2) Protect people from bodily harm by establishing standards of conduct applied to crane operators in order to restrict or remove from the occupation of crane operation those persons proved to have engaged in conduct, habits, behavior or judgment that has caused bodily harm or is reasonably likely to create an unreasonable risk of harm in the future.

(3) Protect crane operators and trainees from undue influence to engage in unsafe practices.

(4) Protect crane operators and trainees from unfair practices in the process of certification or recertification.

(5) Promote competitiveness and economic efficiency in the crane industry without impairing safety, training or certification.

(6) Preserve the value of crane operator certification for the benefit of licensees, their employers and consumers of crane services.

§ 6.2. Definitions.

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

ANSI—The American National Standards Institute.

ASME—The American Society of Mechanical Engineers.

Act—The Crane Operator Licensure Act (63 P. S. §§ 2400.101—2400.2103).

Board—The State Board of Crane Operators.

Certification—Certification from the NCCCO, or another organization found by the Board to offer:

(i) A testing and certification program equivalent to NCCCO and meeting the applicable requirements of ASME B 30.

(ii) The accreditation requirements of the NCCA or ANSI.

Certifying organization—The NCCCO, or another organization approved by the Board to issue certification.

Coal mining or coal mining operations—The extraction of bituminous coal, lignite or anthracite from natural deposits in nonliquid form, or if in liquid form, with workers underground, by any means or method, and the work of preparing coal so extracted.

Commissioner—The Commissioner of Professional and Occupational Affairs within the Department.

Conviction—

(i) An ascertainment of guilt of the accused and judgment thereon by a court, and includes a disposition of a criminal proceeding under Pennsylvania law, or any similar disposition under the laws of another jurisdiction, by a plea of guilty, guilty but mentally ill, or nolo contendere; or a verdict of guilty, or guilty but mentally ill.

(ii) The term does not include an adjudication of delinquency under 42 Pa.C.S. Chapter 63 (relating to Juvenile Act).

Crane—A power-operated hoisting machine that has a power-operated winch, load line and boom moving laterally by the rotation of the machine on a carrier or base which has a manufacturer's rated maximum lifting capacity of 15 tons or more as specified in ASME Volumes B 30.3 and B 30.5, and any successor volumes.

(i) The term includes:

(A) A derrick.

(B) A crawler crane.

(C) A wheel-mounted crane of both truck and self-propelled wheel type.

(D) A tower crane, which has a manufacturer's rated maximum lifting capacity of 10 meter tons or more, as specified in the applicable ASME B 30 volume.

(ii) The term does not include:

(A) A crane or drag line used in coal mining operations.

(B) A forklift.

(C) A digger derrick truck.

(D) An aircraft.

(E) A bucket truck.

(F) A vehicle or machine not having a power-operated winch.

(G) A tow truck or wrecking crane when used for towing or vehicle recovery.

(H) A locomotive crane.

(I) A crane used in longshore operations or other intermodal operations.

(J) A crane used in manufacturing applications.

Crane operator—An individual licensed by the Board to operate a crane.

Declaration—A written designation for a license issued under § 6.22 or § 6.23 (relating to licensure without certification by practical examination; and licensure without certification by experience) specifying the type of crane that a licensee is authorized to operate.

Department—The Department of State of the Commonwealth.

Engage in the operation of a crane or operate a crane—To perform a physical function related to the activation or movement of a crane, and encompassing the use and manipulation of the control mechanisms that direct the movement and hoisting functions of a crane.

Immediate supervision—Circumstances in which the crane operator is in the immediate area of the trainee, within visual sighting distance and able to effectively communicate with the trainee.

Intermodal operations or intermodal services—

(i) Receiving, handling, holding, consolidation, loading or delivery of an intermodal container, as defined in 29 CFR 1917.2 (relating to definitions), at a facility other than a marine terminal.

(ii) The term does not include:

(A) The construction, alteration, service, repair or improvement of real estate appurtenant to a railroad or trucking terminal.

(B) The repair, service or installation of tangible personal property appurtenant to a railroad or trucking terminal.

(C) The assembly, fabrication, installation or arrangement of parts or components of a machine, fixture, transportation improvement to real estate or building, whether for the purpose of a fitting, adjustment, refinement or test as a temporary or preliminary condition; or as a final, permanent or completed work or product.

Lift director—An individual who directly oversees the work being performed by a crane.

Longshore operations—

(i) Receiving, handling, holding, consolidation, loading or delivery of waterborne shipments at a marine terminal as that term is defined in 29 CFR 1917.2.

(ii) The term does not include:

(A) The construction, alteration, service, repair or improvement of real estate appurtenant to a marine terminal.

(B) The repair, service or installation of tangible personal property appurtenant to a marine terminal.

(C) The assembly, fabrication, installation or arrangement of parts or components of a machine, fixture, transportation improvement to real estate, or building, whether for the purpose of a fitting, adjustment, refinement or test as a temporary or preliminary condition; or as a final, permanent or completed work or product.

Manufacturing application or manufacturing or manufacture—

(i) The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any tangible personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer.

(ii) The term includes every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities (including packaging, if any, passing to the ultimate consumer) which it has when transferred by the manufacturer to another.

(iii) The terms “manufacturing application,” “manufacturing” or “manufacture” do not include:

(A) The construction, alteration, service, repair or improvement of real estate.

(B) The repair, service or installation of tangible personal property.

(C) The assembly, fabrication, installation or arrangement of parts or components of a machine, fixture, transportation improvement to real estate or building, whether for the purpose of a fitting, adjustment, refinement or test as a temporary or preliminary condition; or as a final, permanent or completed work or product.

NCCA—National Commission for Certifying Agencies.

NCCCO—National Commission for the Certification of Crane Operators.

OSHA—The United States Occupational Safety and Health Administration.

Trainee—An individual who has not been issued a license under this act or obtained certification but who is authorized to operate a crane as set forth in section 501(c) of the act (63 P.S. § 2400.501(c)), and § 6.13 (relating to qualifications and supervision of trainees) when under the immediate supervision of a crane operator.

Work of preparing the coal—

(i) The breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal, lignite or anthracite, and other work of preparing the coal as is usually done by the operator of a coal mine.

(ii) The term does not include:

(A) The construction, alteration, service, repair or improvement of real estate appurtenant to a coal mine.

(B) The repair, service or installation of tangible personal property appurtenant to a coal mine.

(C) The assembly, fabrication, installation or arrangement of parts or components of a machine, fixture, transportation improvement to a coal mine or building, whether for the purpose of a fitting, adjustment, refinement or test as a temporary or preliminary condition; or as final, permanent or completed work or product.

§ 6.3. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), is applicable to the activities of and proceedings before the Board, and the Board may exercise the powers, remedies, or procedures prescribed therein.

§ 6.4. Fees.

(a) The schedule of fees charged by the Board is as follows:

Initial licensing application fee	\$100
Biennial renewal fee	\$100
Verification of Licensure	\$15
Addition of crane specialty	\$70
Application for certifying organization	\$1,000
Trainee registration fee	\$100

(b) Fees must accompany applications and be made payable to "Commonwealth of Pennsylvania."

LICENSURE

§ 6.11. General requirements.

(a) An individual who engages in the operation of a crane in this Commonwealth shall be licensed by the Board, or shall be authorized to operate a crane as a trainee.

(b) An individual who holds a license as a crane operator shall have the right to use the title "Licensed Crane Operator" and the abbreviation "L.C.O."

(c) To qualify as a candidate for licensure, the applicant shall:

- (1) Be 18 years of age or older.
- (2) Be of good moral character.

(3) Present satisfactory evidence to the Board that the applicant possesses a current certification, or qualifies for licensure without certification under section 506 of the act (63 P. S. § 2400.506).

(4) Aver subject to penalties for unsworn falsification to authorities under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), that the applicant has been examined by a physician and determined to be physically capable of operating a crane.

(5) Pay all requisite fees.

(d) Felony convictions under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or an offense under the laws of another jurisdiction which if committed in this Commonwealth would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, will preclude an applicant from obtaining or maintaining a license to operate a crane unless:

(1) At least 10 years have elapsed from the date of conviction.

(2) The individual satisfactorily demonstrates to the Board that the individual has made significant progress in personal rehabilitation since the conviction so that licensure of the individual should not be expected to create a substantial risk of harm to the health and safety of crane operators, trainees or the public or a substantial risk of further criminal violations.

(3) The individual otherwise satisfies the qualifications provided in the act and this chapter.

(4) The Board will evaluate an individual's progress in personal rehabilitation from the totality of the circumstances, including, but not limited to, the individual's entire criminal history, employment history, the severity and frequency of past criminal history, whether and for how long the individual has abstained from substance abuse, refrained from tortious or criminal conduct, made restitution or compensation, followed a course of treatment and therapy, completed a program of education, offers testimony from other persons of the individual's good character, and practices an ongoing commitment to recovery.

(e) An applicant who has a conviction described in subsection (d) shall report the conviction on a form prescribed by the Board, and attach documentary evidence in support of the factors identified in subsection (d)(1), (2) and (4).

§ 6.12. Certification.

(a) A crane operator's license obtained by certification will be valid only in conjunction with a current certification in the specialty for which the crane operator has been certified.

(b) Proof of certification must include a copy of written and practical examination scores as provided to the applicant by a certifying organization, and a waiver for the certifying organization to release the licensee's certification status and recertification scores to the Board.

(c) A license shall authorize the licensee to operate only the type of crane for which the individual holds a valid certification, and will not be construed as a general license to operate any crane type or to perform all activities related to crane operation.

(d) A person who possesses a certification may not apply for licensure without certification under §§ 6.21—6.23 (relating to licensure without certification).

(e) An individual who acquires certification after October 9, 2010, may not operate a crane as a trainee for a period of more than 90 days from the date of certification, unless granted leave by the Board to operate a crane as a trainee for an additional period of 90 days while an application for licensure is pending before the Board.

§ 6.13. Qualifications and supervision of trainees.

(a) A trainee may operate a crane in this Commonwealth for purposes of acquiring the experience necessary to obtain certification subject to the act and this chapter.

(b) A trainee may only operate a crane, or engage in crane operations, if:

(1) The trainee is under the immediate supervision of a crane operator.

(2) The trainee has satisfied applicable ASME standards for trainee qualification requirements as more fully set forth in the applicable ASME volumes for the type of crane for which the trainee is being trained and supervised, and trainee requirements prescribed by OSHA regulations.

(c) A trainee must be 18 years of age or older and demonstrate to the satisfaction of the crane operator providing immediate supervision and the person employing the crane operator providing immediate supervision, that the trainee is physically capable of operating a crane.

(d) A trainee shall register on a form prescribed by the Board, and attach documentary evidence of a passing score on a written examination administered by a certifying organization.

(e) A trainee may only be authorized to act as a trainee when in possession of written authorization issued in a form prescribed by the Board, and the authorization will only be valid for 1 year from the date of passing the written examination.

(f) A crane operator who immediately supervises a trainee shall perform the duties for supervision of trainees set forth in the ASME volume applicable to the type of crane that is the subject of operation by the trainee, and requirements prescribed by OSHA regulations.

(g) When providing immediate supervision of a trainee under this section, a crane operator may not have other duties, and shall supervise only one trainee at any time.

(h) A crane operator may not accept a duty to supervise a trainee unless the crane operator possesses sufficient competence and experience to safely supervise the trainee for the specific operation or task to be undertaken by the trainee.

§ 6.14. Specialties.

(a) The following types of cranes require specialty licenses from the Board:

- (1) Tower cranes.
- (2) Lattice boom crawlers.
- (3) Lattice boom trucks.
- (4) Telescopic boom cranes with a rotating control station.
- (5) Telescopic boom cranes with a fixed control station.

(b) A license to operate a crane shall be valid only in conjunction with certification if the licensee maintains a current certification in the specialty for which the crane operator is certified.

§ 6.15. Licensure of a crane operator from another jurisdiction.

(a) The Board may issue a license to an individual who has licensure or its equivalent as a crane operator in any other state or territory of the United States or the Dominion of Canada if:

- (1) The individual is 18 years of age or older.
- (2) The individual is of good moral character.
- (3) The individual is currently certified by a certifying organization that:
 - (i) Has been accredited by ANSI or NCCA.
 - (ii) Is a party to a voluntary agreement with OSHA for the purpose of recognizing its program as a validation of the competency and certification of qualifications of crane operators.
 - (iii) Satisfies the requirements of ASME Volume B 30 for operator qualification and certification, and interpretations issued by ASME.
- (4) The individual has paid all requisite fees.

(b) A crane operator or an applicant for licensure as a crane operator shall report the following to the Board:

- (1) Any license held by the individual to operate a crane in another jurisdiction on the original application and on the biennial renewal application.
- (2) Any disciplinary action in another jurisdiction on the biennial registration, or within 30 days of the final disposition, whichever is sooner. For purposes of this section, final disposition means a disposition by a governmental agency levying a monetary penalty, reprimanding

the individual, restricting the individual's license, or otherwise adversely affecting the individual's property interest in the license, and which is appealable under the laws of the jurisdiction where the disposition has been entered.

(c) The Board will note an individual's licensure held in other jurisdictions in the crane operator's record.

(d) The Board will issue written notice to other jurisdictions of the final disposition of any disciplinary action commenced in this Commonwealth.

LICENSURE WITHOUT CERTIFICATION

§ 6.21. Licensure without certification generally.

(a) The Board will accept applications to grant to individuals a license without certification until December 9, 2011, subject to the provisions of this section and §§ 6.22 and 6.23 (relating to licensure without certification by practical examination; and licensure without certification by experience).

(b) To qualify for a license without certification the applicant shall:

- (1) Be at least 18 years old.
- (2) Be of good moral character.
- (3) Pay all requisite fees.
- (4) Satisfy the requirements of § 6.22 or § 6.23.
- (5) Be without any valid certification.

(c) A crane operator's license obtained without certification will be valid only in conjunction with a current and valid photo identification issued by a governmental agency.

§ 6.22. Licensure without certification by practical examination.

(a) An individual who applies for a license without certification under section 506 of the act (63 P.S. § 2400.506) and who satisfies the requirements of § 6.21(b)(1), (2) and (3) (relating to licensure without certification generally) may elect to qualify for a license without certification by a practical examination administered by NCCCO.

(b) An applicant seeking to qualify for a license without certification under this section shall submit with the application for licensure a copy of the practical examination score as provided by NCCCO and shall pay the declaration fee in § 6.4 (relating to fees).

(c) An applicant for a license without certification under this section may be eligible only for a license in the specialty for which the applicant has passed a practical examination administered by NCCCO.

(d) An applicant for a license without certification under this section shall submit with the application an averment that the applicant has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(e) An applicant for a license without certification under this section shall submit with the application documentation of the results of any assessment administered within the 2 years prior to the date of application by a program of operator qualification and certification satisfying the requirements of 29 CFR Part 1926 (relating to safety and health regulations for construction).

(f) In lieu of certification, with a license without certification the Board will issue a declaration specifying the specialty crane for which the licensee has qualified and

for which the applicant has passed a practical examination administered by NCCCO, and limiting the types of cranes that the holder of a license without certification by practical examination may operate.

(g) A license without certification under this section will only be valid in conjunction with the declaration in subsection (f).

§ 6.23. Licensure without certification by experience.

(a) An individual who applies for a license without certification under section 506 of the act (63 P.S. § 2400.506) and who satisfies the requirements of § 6.21(b)(1), (2) and (3) (relating to licensure without certification generally) may elect to qualify for a license without certification by submitting acceptable documentation of 5 or more years of experience immediately preceding the date of application for licensure demonstrating to the Board's satisfaction the applicant's competency to safely operate the type of crane for which the applicant seeks a license, and payment of the requisite declaration fee.

(b) Acceptable documentation consists of:

(1) Each Internal Revenue Service Form W-2 (Wage and Tax Statement) and Internal Revenue Service Form 1099 issued to the applicant for the 5 calendar years prior to the year of application for which the applicant received compensation as a crane operator.

(2) A record of the applicant's experience on a form prescribed by the Board, listing each project in which the applicant operated a crane, or engaged in the operation of a crane including no less than 4,000 hours of work during a period of 5 years immediately preceding the date of application for licensure.

(c) The record of the applicant's experience must identify:

(1) The name and business address of the prime contractor or other person who employed or engaged the services of the applicant.

(2) Whether the applicant worked as an employee or independent contractor on the project.

(3) The location of the project.

(4) The type of crane operated.

(5) Whether an incident occurred in the operation of the crane resulting in disability to an individual in excess of the working shift or turn in which the injury was received.

(6) The number of hours worked on the project engaged in the operation of a crane.

(7) If the applicant worked as an independent contractor in the operation of a crane at any time during the 5 years prior to the date of application, a certificate of insurance for each insurer who issued a policy of comprehensive general liability insurance to the applicant.

(d) An applicant for a license without certification under this section may be eligible only for a license in the specialty for which the applicant has submitted acceptable documentation.

(e) An applicant for a license without certification under this section shall submit with the application an averment that the applicant has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(f) An applicant for a license without certification under this section shall submit with the application documentation of the results of any assessment administered within the 2 years prior to the date of application by a program of operator qualification and certification satisfying the requirements of 29 CFR Part 1926 (relating to safety and health regulations for construction).

(g) In lieu of certification, with a license without certification under this section the Board will issue a declaration specifying the specialty crane for which the licensee has qualified with at least 1,000 hours and for which the applicant has submitted acceptable documentation, and limiting the types of cranes that the holder of a license without certification by experience may operate.

(h) A license without certification under this section shall only be valid in conjunction with the declaration in subsection (g).

RENEWAL OF LICENSE

§ 6.31. Duration of license.

(a) A licensee shall register each biennial period to retain the right to operate a crane.

(b) Licensure is valid throughout this Commonwealth, is not assignable or transferable, and is valid until the last date of the biennial licensure period.

§ 6.32. Renewal of license.

(a) Application for renewal of a license with certification must be made on forms provided by the Board, and include:

(1) Proof of current, valid certification issued by a certifying organization.

(2) An indication whether certification will expire before the biennial renewal cycle will expire. In the case of a licensee applying for renewal of license where certification will expire before the biennial renewal cycle will expire, the licensee shall submit to the Board before the expiration of the certification, evidence that the licensee has renewed certification consisting of proof of recertification. Failure to maintain certification, or to submit evidence of renewal of certification before the expiration date of certification will subject the licensee to disciplinary action.

(3) A waiver for the certifying organization to release the licensee's certification status and recertification scores to the Board.

(4) An averment that the licensee has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(b) Application for renewal of a license without certification by practical examination issued originally under § 6.22 (relating to licensure without certification by practical examination) must be made on forms provided by the Board, and include:

(1) Proof of a passing score on a practical examination administered by NCCCO during the 2-year period immediately preceding the date of the application for renewal.

(2) An averment that the applicant has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(3) The results of any assessment administered after the commencement of the previous biennial period of licensure by a program of operator qualification and

certification satisfying the requirements of 29 CFR Part 1926 (relating to safety and health regulations for construction).

(c) Application for renewal of a license without certification by experience issued originally under § 6.23 (relating to licensure without certification by experience) must be made on forms provided by the Board, and include:

(1) A record of the applicant's work experience in the form provided under § 6.23(c) demonstrating 1,600 hours of experience during the 2-year period immediately preceding the date of application for renewal.

(2) An averment that the applicant has been examined by a physician and successfully passed an examination that satisfies the requirements of ASME Volume B 30.5.

(3) The results of any assessment administered after the commencement of the previous biennial period of licensure by a program of operator qualification and certification satisfying the requirements of 29 CFR Part 1926.

(d) The application for renewal must be received by the Board with the required biennial renewal fee before the expiration of the previous biennial registration period.

(e) Renewal of a license without certification under § 6.22 or § 6.23 may be denied for any individual who has been administered an assessment by a program of operator qualification and certification satisfying the requirements of 29 CFR Part 1926, and who has failed the assessment and who has not subsequently obtained a passing score in the same assessment or another assessment that meets the requirements of 29 CFR Part 1926.

§ 6.33. Initiating and terminating inactive status.

(a) An individual holding a license with certification may request an application for inactive status from the Board.

(b) An individual holding a license without certification issued originally under § 6.22 or § 6.23 (relating to licensure without certification by practical examination; and licensure without certification by experience) may request inactive status for a period not to exceed 5 years less 1 day.

(c) The license will be maintained on inactive status without fee and the individual shall be entitled to apply for a license reactivation at any time.

(d) An individual who applies to reactivate a license that has been placed on inactive status for 5 consecutive years or more shall, prior to receiving an active license, submit satisfactory evidence of current certification and remit the required fee.

§ 6.34. Licensee's change of name or address; service of process and legal papers.

(a) A licensee's name on file with the Board shall be the name that appears on the license unless that name is legally changed, in which case the licensee shall report the change and the reason for the change to the Board in writing within 10 days.

(b) A licensee who changes an address on file with the Board shall notify the Board in writing within 10 days. Licensees who do not comply with this subsection shall bear full responsibility for failure to receive correspondence from the Board, including biennial renewal notifications.

(c) A licensee's most recent name and address on file with the Board shall be deemed the licensee's official name and address for the purposes of service of process and other legal papers.

DISCIPLINARY ACTIONS

§ 6.41. Unlicensed crane operation.

(a) An individual may not operate a crane, offer one's services as a crane operator, or hold oneself out as a crane operator unless licensed by the Board.

(b) A person who is not licensed by the Board offers services as a crane operator, or holds oneself out as a crane operator by:

(1) Express words or conduct that the individual is a licensed crane operator.

(2) A failure to disclose that the individual does not possess a license to operate a crane, under circumstances which would require a license.

(3) Words or conduct that the person offering services as a crane operator or holding out as a crane operator has reason to know would cause a third person to reasonably believe that the individual uttering the words or engaging in the conduct is a crane operator, holds a license as a crane operator, or possesses the skill, knowledge, authority or expertise to operate a crane.

§ 6.42. Impaired operation of a crane and reportable conditions, incidents or events.

(a) A crane operator or trainee may not operate a crane if, by reason of physical or mental impairment, the crane operator or trainee cannot reasonably be expected to operate a crane safely or engage in the operation of a crane safely.

(b) A crane operator or trainee shall report to the lift director of the crane which the crane operator or trainee has been employed to operate, or has been retained to operate as an independent contractor, any physical or mental impairment that may reasonably be expected to affect the operation of a crane.

(c) If, in addition to acting as the crane operator, the licensee fulfills the function of a lift director, or another role required under applicable ASME B 30 volumes, the crane operator shall report to a responsible person, such as the property owner, prime contractor, project manager, project superintendent or other person in charge of the premises on which the crane shall be operated, any physical or mental impairment that may reasonably be expected to affect the operation of a crane.

(d) If a crane operator or trainee files a claim for workers' compensation, Social Security Disability, or for disability benefits under any other policy or program, or commences an action seeking compensation for personal injuries, the crane operator or trainee shall, contemporaneously with the commencement of the claim or action, provide the Board with a copy of the document commencing the claim or action.

(e) If a crane operator or trainee obtains a diagnosis or opinion from a licensed health care practitioner that the crane operator or trainee is subject to a physical, mental or other condition lasting more than 30 days and that may reasonably be expected to affect the operation of a crane, the crane operator or trainee shall notify the Board, in writing within 10 days, of the name of the licensed health care practitioner who provided the opinion, the condition or impairment that has been diagnosed or the opinion that has been rendered, and the prognosis for the condition.

(f) A crane operator shall report in writing to the Board criminal proceedings in a court case against the crane operator within 10 days of the institution of the criminal proceedings. The written report of criminal proceedings

under this subsection must include the jurisdiction in which the proceedings have been instituted, the docket number, offense tracking number or other number identifying the criminal proceeding, and the offense or offenses with which the crane operator has been charged. A court case means a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.

(g) An individual will not be authorized to operate a crane as a trainee if criminal proceedings in a court case have been instituted against that person, unless the individual has petitioned the Board for leave to be authorized to act as a trainee, and the Board has granted the person's petition.

§ 6.43. Aiding and abetting unlicensed crane operation.

(a) Except as provided in § 6.13 (relating to qualifications and supervision of trainees), an individual, corporation, partnership, firm or other entity may not:

- (1) Employ an unlicensed individual to operate a crane.
- (2) Allow or direct an unlicensed individual to operate a crane.
- (3) Retain or hire an unlicensed individual as an independent contractor to operate a crane.
- (b) If an individual, corporation, partnership, firm or other entity has been found by the Board on three or more occasions during a 4-year period to have violated subsection (a), the Board may declare the individual, corporation, partnership, firm or other entity to be a chronic aider and abettor of unlicensed crane operation.
- (c) The Board may bar all crane operators from accepting employment, or accepting retention as an independent contractor with a chronic aider and abettor of unlicensed crane operation.
- (d) An entity which has been declared a chronic aider and abettor of unlicensed crane operation may petition the Board 1 year after being barred to request that the bar be removed.
- (e) The Board may impose restrictions on licensees, demand posting of a bond or other security by the petitioner, or place other restrictions on the petitioner to assure future compliance.

§ 6.44. Standards of conduct, disciplinary action, suspension and revocation.

- (a) The Board may levy a civil penalty, impose costs of investigation, or refuse, restrict, suspend or revoke a license if the Board finds that an individual subject to its jurisdiction violated the act or this chapter.
- (b) The following acts, errors or omissions constitute a violation of the standards of conduct of a crane operator:
 - (1) Negligent operation of a crane.
 - (2) Operation of a crane without the ability to use reasonable skill and safety by reason of mental or physical illness or condition.
 - (3) Operation of a crane while impaired by alcohol, hallucinogenic or narcotic drugs, or another substance that impairs judgment or coordination.
 - (4) Operation of a crane during a period of time when:
 - (i) The individual abuses alcohol, hallucinogenic or narcotic drugs, or other substances that impair judgment or coordination.

- (ii) The individual is dependent upon alcohol, hallucinogenic or narcotic drugs, or other substances that impair judgment or coordination, and dependence is not in full remission.

- (5) Violation of any of the provisions of the act or this chapter.

- (6) Commission of fraud or deceit in:

- (i) The operation of a crane.
 - (ii) Securing licensure or certification.
 - (iii) Securing renewal of licensure or certification.

- (7) Conviction of a felony or a crime of moral turpitude, or disposition by probation without verdict, disposition in lieu of trial or Accelerated Rehabilitative Disposition in the disposition of a felony or a crime of moral turpitude in the courts of this Commonwealth, the United States or any other state, territory, possession of the United States or any other country.

- (8) Violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144) or an equivalent offense under the laws of another jurisdiction.

- (9) Failure to operate a crane consistent with the applicable ASME B 30 standard.

- (10) Failure to operate a crane in a manner consistent with accepted standards in the industry.

- (11) Operation of a crane, engaging in the operation of a crane or continuing to operate a crane, when the crane operator had reason to know of conditions or circumstances under which the crane could not be operated without exposing persons or property to an unreasonable risk of harm.

- (12) Violation of a lawful order of the Board.

- (13) Failure to properly supervise a trainee.

- (14) Failure to report an event, occurrence, injury, property damage, claim, condition, diagnosis, civil action, criminal proceeding or other matter subject to the duty to report in § 6.42 (relating to impaired operation of a crane and reportable conditions, incidents or events).

- (15) Failure to follow applicable workplace safety standards of OSHA, or other applicable safety standards of the Commonwealth or another jurisdiction, regardless of whether the violation arose from the operation of a crane.

- (16) Conviction or disposition by Accelerated Rehabilitative Disposition or any disposition other than a nonconviction, for a violation of 75 Pa.C.S. §§ 3801—3817 (relating to driving after imbibing alcohol or utilizing drugs).

- (17) Conviction or disposition by Accelerated Rehabilitative Disposition, or any disposition other than a nonconviction for an offense that involves intentional or reckless conduct that poses an unreasonable risk of bodily harm to others.

- (18) Whether or not acting in the capacity of a crane operator, to discharge, discipline or in any manner discriminate against another person with respect to that

person's compensation, terms, conditions or privileges of employment or independent contract, for any of the following reasons:

(i) The other person has refused to operate a crane, or participate in the operation of a crane in a manner which is not in compliance with the act, this chapter, a Federal rule, regulation, standard or order applicable to crane operation, or the applicable ASME B 30 volume.

(ii) The other person, or a person acting under a request of the other person, has filed a complaint or instituted or caused to be instituted any proceeding relating to a violation of the act, this chapter, a Federal rule, regulation, standard or order applicable to crane operation, or the applicable ASME B 30 volume, or has testified or is about to testify in the proceeding.

(iii) The other person refused to participate in the operation of a crane as a rigger, signal person, or in another function related to the operation of a crane when the operation constitutes a violation of the act, this chapter, an applicable ASME B 30 volume, or Federal rules, regulations, standards or orders applicable to crane operation.

(iv) The other person had a reasonable apprehension of serious injury to himself, or to another person due to the unsafe condition of the crane or the unsafe manner in which the crane was to be operated. For purposes of this paragraph, the other person has a reasonable apprehension of serious injury due to the unsafe condition of a crane or the unsafe manner in which a crane is to be operated if:

(A) The condition of the crane or manner of operation is of a nature that a reasonable person, under the circumstances then confronting the other person, would conclude that there is a bona fide danger of an accident, injury or serious impairment of health resulting from the unsafe condition or unsafe manner of operation.

(B) The other person sought from the lift director and was unable to obtain correction of the unsafe condition or unsafe manner of operation.

(c) It shall be an affirmative defense to an allegation of a violation of subsection (b)(1), (9), (10) or (11) that the crane operator acted, or refrained from acting, in justifiable reliance upon the advice, instruction or direction of the site supervisor or the lift director.

(d) It shall be an affirmative defense to an allegation of a violation of subsection (b)(2), (3), (4) or (14) that the crane operator acted, or refrained from acting, in justifiable reliance upon the advice of a licensed health care practitioner.

CERTIFYING ORGANIZATIONS

§ 6.51. Certifying organizations.

An organization may apply to the Board in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) for approval to issue certification under the act.

§ 6.52. Application for approval as a certifying organization.

(a) An entity seeking to issue certification under the act shall submit, in writing, an application in a form prescribed by the Board that avers, under penalty for unsworn falsification to authorities at 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), the following:

(1) The name and business address of the applicant.

(2) The name and title of the individual authorized to act as the applicant's agent.

(3) The name, title and principal business address of each individual who is an officer of the applicant.

(4) The type of corporate organization and the state in which the applicant is incorporated or organized.

(5) The names and addresses of any parent or subsidiary entities of the applicant.

(6) The names and addresses of each entity that is affiliated with the applicant. For purposes of this section, "entity which is affiliated with the applicant" means an entity having common or interlocking ownership with the applicant, or with a parent or subsidiary of the applicant.

(7) Whether the applicant or any of the entities identified in paragraph (5) or (6) offer a program of training or education in crane operation.

(8) Whether the applicant is accredited by ANSI, NCCA, or both.

(9) A description of the testing and certification program administered by the applicant.

(10) Whether the applicant has entered into a voluntary agreement with OSHA for the purpose of recognizing its program as a validation of the competency and certification of the qualifications of crane operators.

(11) Each crane type described in ASME Volume B 30 for which the applicant requests approval to issue certification.

(12) Each function or occupation other than crane operator and which is related to the operation of a crane, for which the applicant issues certification.

(13) An averment that the applicant's testing and certification program is equivalent to the testing and certification program used by NCCCO.

(14) Whether the applicant, a parent entity, subsidiary entity or an entity affiliated with the applicant has been subject to disciplinary action in another jurisdiction, or has been the subject of civil or criminal proceedings in this Commonwealth or another jurisdiction, and if so, the jurisdiction, the nature of the claims or charges, the disposition and the docket or case number of the disciplinary action, civil proceedings or criminal proceedings.

(b) The organization shall attach to its application as an exhibit, and incorporate by reference, a copy of any documents upon which the applicant's accreditation has been based, and the applicant's agreement with OSHA.

(c) The application must be accompanied by the application fee set forth in § 6.4 (relating to fees).

§ 6.53. Required and discretionary bases for disapproval of an application as a certifying organization; bases for approval; and terms of equivalence to NCCCO.

(a) The Board will deny an application for approval as a certifying organization on the basis that it is not equivalent to certification issued by NCCCO for any one or more of the following reasons:

(1) The applicant is not accredited by ANSI or NCCA.

(2) The applicant is not a party to a voluntary agreement with OSHA for the purpose of recognizing its program as a validation of the competency and certification of the qualifications of crane operators.

(3) The applicant has failed to verify the statements in the application.

(4) The applicant has made a material statement on its application that it knows or has reason to know is false.

(5) The applicant's program of testing and certification does not satisfy the requirements in ASME Volume B 30 for operator qualification and certification, and interpretations issued by ASME.

(6) The applicant's program of testing and certification does not satisfy the requirements of 29 CFR 1926.1427 (relating to operator qualification and certification).

(b) The Board may deny an application for approval as a certifying organization if the Board finds that the applicant, its parent, its subsidiary, or an entity affiliated with the applicant has been the subject of disciplinary action in another jurisdiction, or has been found in a civil proceeding or criminal proceeding to have been engaged in fraudulent conduct, misrepresentation, unfair commercial or consumer practices, breach of contract or negligence.

(c) The Board will grant approval to a certifying organization that:

(1) Offers a program of testing and certification that is equivalent to the program of testing and certification offered by NCCCO, as defined in subsection (d).

(2) Has not been the subject of disciplinary action in another jurisdiction, or has been found in a civil proceeding or criminal proceeding to have been engaged in fraudulent conduct, misrepresentation, unfair commercial or consumer practices, breach of contract or negligence.

(d) A program of testing and certification is equivalent to the program of testing and certification offered by NCCCO if:

(1) It is accredited by ANSI or NCCA.

(2) It has entered into a voluntary agreement with OSHA for the purpose of recognizing its program as a validation of the competency and certification of the qualifications of crane operators.

(3) It satisfies the requirements of ASME Volume B 30 for operator qualification and certification, and interpretations issued by ASME.

(4) It satisfies the requirements in 29 CFR 1926.1427.

§ 6.54. Determination of application for approval as a certifying organization.

(a) Upon receipt of an application for approval, the Board will make a determination of completeness of the application.

(b) If the Board has made a determination that the application is incomplete, but the completed portion of the application demonstrates on its face that the applicant's program is not equivalent to NCCCO certification according to the criteria in § 6.53(d) (relating to required and discretionary bases for disapproval of an application as a certifying organization; bases for approval; and terms of equivalence to NCCCO), the Board will deny the application, advise the applicant in writing of the deficiencies or incompleteness, and the specific grounds on which a determination that the program is not equivalent to NCCCO certification, and advise the applicant of its right to file within 30 days a request for a hearing before the Board, together with supplementation to complete the application.

(c) If the application is incomplete, and the completed portion of the application does not demonstrate that the applicant's program is not equivalent to NCCCO certification, the Board will advise the applicant in writing of the

deficiencies or incompleteness, and advise the applicant of its right to supplement the application within 30 days.

(d) If the application is complete, or if the application is incomplete but the applicant has not supplemented the application within 30 days, or if the applicant entity has not requested a continuance of the Board's consideration, the Board may refer the application for review to an appropriate and qualified individual or firm to independently evaluate and review the application for equivalence to NCCCO certification as defined in § 6.53(d) or the Board may issue an order approving or provisionally denying the application.

(e) If the Board refers the application for an independent evaluation and review, the review will be completed within 60 days with a written opinion provided to the Board by the evaluator expressing an opinion as to the applicant entity's equivalence to NCCCO certification, and a copy of the opinion to the applicant entity.

(f) Upon consideration of the written opinion of the independent evaluation and review, or if the Board has not referred the application for an independent evaluation and review, the Board will enter an appropriate order to approve, schedule a hearing, or provisionally deny the application.

(g) If the Board provisionally denies the application, the Board will advise the applicant of its right to file within 30 days a request for a hearing.

(h) Upon filing of a request for a hearing under subsection (b) or (g), the Board will schedule the matter for a hearing.

(i) After a hearing the Board may:

(1) Grant approval to issue certification for all crane types described in ASME Volume B 30 as requested in the application.

(2) Grant approval to issue one or more, but less than all certifications for crane types described in ASME Volume B 30 as requested in the application.

(3) Deny approval to issue any certifications requested in the application.

(j) The applicant shall have the burden of proving that its testing and certification program is equivalent to NCCCO as provided in § 6.53(d).

(k) If the applicant does not request a hearing within 30 days as provided in subsection (b) or (g), the Board will issue a final order denying the application.

(l) An applicant that has been denied approval may re-apply for approval as a certifying organization.

§ 6.55. Order granting an application for approval as a certifying organization.

(a) An order granting an application for approval as a certifying organization will include:

(1) The legal name of the certifying organization.

(2) The date on which the application was approved.

(3) The date on which the order was entered.

(4) Each crane type described in ASME Volume B 30 for which the Board has granted approval.

(5) A statement of authorization that the certifying organization may hold itself out as a certifying organization in this Commonwealth.

(6) A statement that the certifying organization shall notify within 10 days, in writing, the Board and to each

individual holding its certification, any change to its accreditation by NCCA or ANSI.

(7) A statement that the certifying organization shall immediately and voluntarily cease and desist from issuing certifications, or holding itself out as a certifying organization in this Commonwealth upon a determination suspending, withdrawing or terminating its accreditation by NCCA or ANSI.

(8) A statement that the certifying organization shall submit to the Board within 30 days of receipt from NCCA or ANSI a copy of each certificate of renewal of accreditation.

(9) A statement that the certifying organization shall comply with all revisions to applicable ASME B 30 standards and 29 CFR 1926.1427 (relating to operator qualification and certification).

(10) A statement that the authorization to issue certifications in this Commonwealth granted by the order to approve the application is not transferable.

(b) An order granting approval of a certifying organization will cease to be effective by operation of law upon either of the following conditions:

(1) The failure of the certifying organization to comply with the obligations in subsection (a)(6), (7), (8) or (9).

(2) A suspension, withdrawal or termination of accreditation by NCCA or ANSI.

§ 6.56. Petition to terminate approval as a certifying organization.

(a) The Commonwealth may file a petition to terminate approval as a certifying organization for any one of the following reasons:

(1) Upon information and belief that the certifying organization has failed to satisfy the conditions of § 6.55(b) (relating to order granting an application for approval as a certifying organization).

(2) Upon information and belief that the order granting the application for approval as a certifying organization was granted based upon a misrepresentation of a mate-

rial fact by the applicant which neither the Board nor the Commonwealth knew or had reason to know at the time the order was issued.

(3) Upon information and belief that:

(i) The certifying organization has terminated its existence.

(ii) The certifying organization has ceased to be qualified to do business in this Commonwealth.

(iii) The certifying organization has ceased to offer its certification to residents of this Commonwealth.

(b) A petition to terminate approval as a certifying organization must include:

(1) A copy of any writing upon which the petition is based.

(2) A notice to plead demanding an answer to the allegations of the petition, and advising the certifying organization of its rights under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(3) If the Commonwealth requests immediate suspension of the certifying organization's approval, the petition must include allegations demonstrating an immediate risk of harm to the public or persons holding certification from the respondent certifying organization.

(c) Within 20 days of service of the petition to terminate approval as a certifying organization, the certifying organization shall file a written answer to the petition admitting or denying each allegation and setting forth any affirmative defenses.

(d) Upon close of the pleadings, the Board will issue an order scheduling the matter for a hearing at the next available regularly scheduled board meeting, or delegate the matter to a hearing examiner.

(e) If the Board grants the petition to terminate approval as a certifying organization, the Board may, if otherwise authorized by statute, levy the costs of investigation upon the certifying organization.

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