



Volume 40 (2010)

Pennsylvania Bulletin
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October 9, 2010 (Pages 5727-5888)

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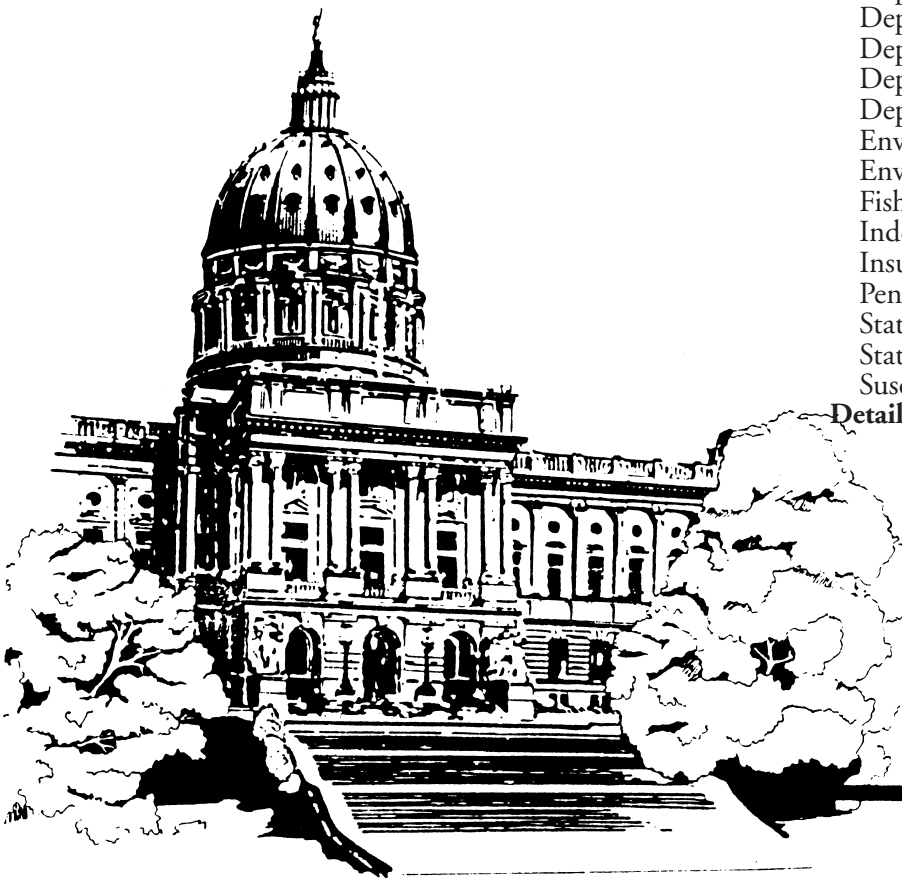
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PENNSYLVANIA BULLETIN

Volume 40
Saturday, October 9, 2010 • Harrisburg, PA
Number 41
Pages 5727—5888

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(Master Transmittal Sheets):**

No. 431, October 2010

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PENNSYLVANIA



BULLETIN

(ISSN 0162-2137)

published weekly by Fry Communications, Inc. for the Commonwealth of Pennsylvania, Legislative Reference Bureau, 641 Main Capitol Building, Harrisburg, Pa. 17120, under the policy supervision and direction of the Joint Committee on Documents pursuant to Part II of Title 45 of the Pennsylvania Consolidated Statutes (relating to publication and effectiveness of Commonwealth Documents). Subscription rate \$82.00 per year, postpaid to points in the United States. Individual copies \$2.50. Checks for subscriptions and individual copies should be made payable to "*Fry Communications, Inc.*" Periodicals postage paid at Harrisburg, Pennsylvania.

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Mechanicsburg, Pennsylvania 17055-3198
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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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List of Pa. Code Chapters Affected

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THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 4 AND 7]

Order Adopting Rules 490 and 790 and Rescinding Rule 722 of the Rules of Criminal Procedure; No. 394 Criminal Procedural Rules

Order

Per Curiam

And Now, this 22nd day of September, 2010, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 39 Pa.B. 4332 (7/25/2009), and in the Atlantic Reporter (Second Series Advance Sheets, Vol. 973), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Criminal Procedure 490 and 790 are adopted and Pennsylvania Rule of Criminal Procedure 722 is rescinded all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 90 days.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART H. Summary Case Expungement Procedures

490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

Rule 490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

(A) *Petition for Expungement*

(1) Except as provided in Rule 320, an individual who satisfies the requirements of 18 Pa.C.S. § 9122 for expungement of a summary case may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) A current copy of the petitioner's Pennsylvania State Police criminal record shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) *Objections; Hearing*

(1) Within 30 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) The order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

(C) *Order*

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal record to the petition.

A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.

"Petition," as used in this rule, is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal, arrest or prosecution free for five years following the conviction for that summary offense, or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 594 Pa. 346, 936 A.2d 1 (2007); *Commonwealth v. J.H.*, 563 Pa. 248, 759 A.2d 1269 (2000).

Official Note: Adopted September 22, 2010 effective in 90 days.

Committee Explanatory Reports:

Final Report explaining the September 22, 2010 promulgation of new Rule 490 providing the procedures for expungements in summary cases published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART B. Post-Sentence Procedures

Rule 722. [Contents of Order for Expungement]
Rescinded.

[Every order for expungement shall include:

(1) the defendant's name, date of birth, and social security number;

(2) the OTN;

(3) the district justice docket number and the magisterial district number, or the Municipal Court docket number;

(4) the court of common pleas docket number, if any;

(5) the specific charges, as they appear on the charging document, to be expunged;

(6) the date of arrest and the criminal justice agency which made the arrest;

(7) the disposition;

(8) the reason for expungement; and

(9) the criminal justice agencies upon which certified copies of the order shall be served.

Comment

This rule sets forth the information that must be included in every expungement order, but is not intended to be an exclusive list.

When a summons instead of an arrest warrant is issued pursuant to Rule 518, the date of the summons constitutes the "date of arrest" for purposes of paragraph (6).

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

The "reason for expungement" in paragraph (8) means, for example, acquittal, successful completion of ARD, or age.]

Official Note: Rule 9017 adopted February 24, 1993, effective July 1, 1993; renumbered Rule 722 and Comment revised March 1, 2000, effective April 1, 2001; rescinded September 22, 2010, effective in 90 days, and replaced by new Rules 490(C) and 790(C).

Committee Explanatory Reports:

Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1134 (March 13, 1993).

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

Final Report explaining the September 22, 2010 rescission of Rule 722 published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

PART C. Court Case Expungement Procedures

Rule 790. Procedure for Obtaining Expungement in Court Cases; Expungement Order.

(A) *Petition for Expungement*

(1) Except as provided in Rule 320 and 35 P.S. § 780-119, an individual who satisfies the requirements for expungement may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint, if available;

(d) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies;

(e) the offense tracking number (OTN);

(f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) A current copy of the petitioner's Pennsylvania State Police criminal record shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) *Objections; Hearing*

(1) Within 60 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 60-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) The order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

(C) *Order*

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint, if available;

(d) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies;

(e) the offense tracking number (OTN);

(f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in court cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under this rule.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a court case, Rule 490 for summary case expungement procedures, and 35 P.S. § 780-119 for expungement procedures under The Controlled Substance, Drug, Device, and Cosmetic Act.

This rule sets forth the only information that must be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal record to the petition.

An order for expungement under The Controlled Substance, Drug, Device, and Cosmetic Act, 35 P.S. § 780-119, also must include the information in paragraph (C).

A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.

"Petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

The “reason for expungement” in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

When a summons instead of an arrest warrant is issued pursuant to Rule 519, the date of the summons constitutes the “date of arrest” for purposes of paragraph (A)(2)(f).

For purposes of this rule, “criminal justice agency” includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 594 Pa. 346, 936 A.2d 1 (2007); *Commonwealth v. J.H.*, 563 Pa. 248, 759 A.2d 1269 (2000).

Official Note: Adopted September 22, 2010, effective in 90 days.

Committee Explanatory Reports:

Final Report explaining the September 22, 2010 promulgation of new Rule 790 providing the procedures for expungements in court cases published with the Court’s Order at 40 Pa.B. 5740 (October 9, 2010).

FINAL REPORT¹

New Pa.Rs.Crim.P. 490 and 790 and Rescission of Pa.R.Crim.P. 722

Procedures for Requesting and Ordering Expungement

On September 22, 2010, effective in 90 days, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rules of Criminal Procedure 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and 790 (Procedure for Obtaining Expungement in Court Cases; Expungement Order), and rescinded Pa.R.Crim.P. 722 (Contents of Order for Expungement). These new rules establish uniform procedures for petitioning and ordering expungement in summary and court cases.

I. Background

The Committee undertook an examination of the issue of providing in the rules the procedures for requesting expungement after the enactment of Act 134 of 2008. Act 134 amends Section 9122 of the Criminal History Record Information Act (18 Pa.C.S. § 9122) (“CHRIA”) by providing that a defendant’s summary offenses may be expunged when the defendant “has been free of arrest or prosecution for five years following the conviction for that offense.”

When Act 134 became effective, the Committee received several communications asking us to consider rule changes that would provide the procedures for requesting expungement under the statute.² The Committee was cognizant that the current Rules of Criminal Procedure only establish procedures for expungement following the successful completion of an Accelerated Rehabilitation Disposition (ARD) program (Rule 320) and provide the contents of an expungement order (Rule 722). The members also opined that many defendants in summary cases likely will proceed *pro se* in seeking expungement. In

view of these considerations, and recognizing that without a uniform statewide rule, the procedures may vary significantly among the judicial districts, the members agreed to explore statewide uniform procedures for requesting expungement.

II. Discussion

Initially, the Committee considered several options for how to proceed. The members considered merely retaining Rule 722 (Contents of Order for Expungement) and adding a reference to the summary expungement provisions in CHRIA in the Rule 722 Comment. The Committee also discussed adding to Rule 722 a section for procedures for summary case expungements; establishing a separate summary case expungement rule; or developing procedures for both summary and court case expungements. Ultimately, the Committee agreed (1) that the provisions for expungement following completion of ARD should continue to be handled separately under Rule 320; (2) offenses entitled to expungement under 35 P.S. § 780-119 (“Section 19”) would continue to proceed under the statute; and (3) there should be separate rules establishing the procedures for summary case expungements and for court case expungements. By retaining the separate procedures for ARD cases and for cases under Section 19 and having separate new rules for all other summary and court cases, it will be easier for the members of the bench, bar, and the public to utilize the correct procedures.

The next question the Committee considered was the placement of the new rules. Because an expungement request ordinarily will not occur until after sentencing, the new summary case expungement rule has been placed at the end of Chapter 4 as new Rule 490 and the new court case expungement rule has been placed at the end of Chapter 7 as new Rule 790. To distinguish both new rules from the rules immediately preceding these new rules, new subchapters have been added to Chapter 4 and Chapter 7 governing expungement.

In determining what the procedures for summary and court case expungements should be, the Committee looked at the provisions for ARD expungements in Rule 320, the contents of the order set forth in Rule 722, the expungement procedures set forth in local rules, and the expungement procedures in other jurisdictions. Drawing from these resources, the members recommended and the Court agreed that the new rules should provide the following:

- the petition should be filed with the clerk of courts in the court of common pleas in which the offense was disposed, and a copy must be served on the attorney for the Commonwealth;
- the contents of the petition should include the information that must be included in the order required by Rule 722 and the verification language from Rule 575(2)(g);
- the attorney for the Commonwealth should have the right to file objections to the petition;
- the court should conduct a hearing when there are objections and the parties should have an opportunity to respond;
- there should be a separate section in the rules for the order that would require the judge to enter an order and the order must include all the contents from Rule 722;
- the clerk of courts must serve copies of the expungement order on the criminal justice agencies specified in the court’s order.

¹ The Committee’s Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee’s Comments or the contents of the Committee’s explanatory Final Reports.

² The Committee received communications about summary case expungements from John Heaton, Secretary to the Board of Pardons, Representative Thomas R. Caltagirone, and private citizens.

A. New Rule 490

New Rule 490 sets out the procedures for requesting and ordering expungement in all summary cases.

Paragraph (A)(1) and the second paragraph of the Comment make it clear that summary case ARD expungements are to proceed pursuant to Rule 320. Paragraph (A)(1) also requires the expungement petition to be filed with the clerk of courts in the judicial district in which the offenses were disposed.³ Although the requested expungement is of summary offenses that are within the jurisdiction of the magisterial district judges, the Committee believes the CHRIA contemplates that the judges of the courts of common pleas should order expungements, even though this is not spelled out specifically in the CHRIA. Furthermore, the expungement proceedings should be in the court of common pleas because (1) there is not a rule-governed motion practice in the summary case rules; and (2) the magisterial district courts are not courts of record.⁴ As a matter of uniform procedure, the term "motion" is used in the Criminal Rules whenever feasible.⁵ However, for these new expungement procedures, the term "petition" is used to avoid confusion because this is the term used in the statute and in many of the local rules providing expungement procedures. To clarify this variation further, a provision has been added to the Comment explaining that "petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

Paragraph (A)(2) sets forth the contents of the petition. All the information required to be in the petition is necessary to aid the attorney for the Commonwealth and the court to identify accurately the defendant and the offense(s) the defendant is asking to have expunged. The contents are the mandatory contents and may not be supplemented or modified by local rule or practice. This prohibition against modification was added to the new rules in response to points raised in the publication responses concerning the importance of having uniformity in the expungement procedures. The correspondents noted that, if the counties are able to add to the information required on the petition, defendants will be hindered in their efforts to obtain expungement, and preclude the use of a statewide uniform form of petition that will be developed in conjunction with the adoption of these new rules. This prohibition is made clear in the last sentence of paragraph (A)(2).

Most of the required information is the same as the information that was required under Rule 722 for the expungement order. In paragraph (A)(2)(a), the requirement of including "any aliases that the petitioner has used" has been added as an additional identifier. Paragraph (A)(2)(j) includes the requirement that the petitioner verify the facts set forth in the petition, which is consistent with all other motions. *See* Rule 575(2)(g).

Rule 722(1) required the defendant's social security number be included on the order for expungement. The Committee debated at length whether the social security number should be required on the petition and order in the new expungement rules. The members are aware that section 213.7 of the Court's new Public Access Policy governing the official case records of the magisterial district courts direct parties and their attorneys to refrain from including social security numbers on documents filed

with the court. We also noted many other governmental agencies are taking the position that social security numbers should not appear on public documents, although as a compromise, some governmental agencies will require only the last four digits of the social security number. Furthermore, in their publication comments, the AOPC's automation staff reiterated the concerns about including social security numbers on the expungement petitions and orders.

Although the concerns about protecting a defendant's privacy and protecting the defendant from identity theft and other misuse of the social security number are legitimate concerns and worthy of consideration, in the context of the criminal justice system, the social security number continues to be a necessary identifier of defendants. In fact, communications from the AOPC and the Pennsylvania State Police indicate that the State Police and the FBI require the full social security number for purposes of ensuring accurate identification before these criminal justice agencies are able to expunge a defendant's criminal record. After carefully weighing the need to protect a defendant's privacy and to protect the defendant from misuse of the social security number against the stated need of various criminal justice agencies to continue to use the full social security number as an identifier, it was determined that the full social security number should be retained as an identifier in expungement cases, at least in the immediate future until such time as the social security number no longer is used as an identifier.

Paragraph (A)(3) requires the defendant to attach to the petition a copy of his or her Pennsylvania State Police criminal record. Two of the publication respondents suggested this addition because they believe providing the court with a copy of the criminal record maintained by the State Police will ensure the court has accurate information concerning the offenses the defendant is requesting be expunged. In addition, to ensure the information on the criminal record is accurate, the rule requires that the copy of the criminal record be obtained by the defendant within 60 days before filing the petition.

Paragraph (A)(4) requires that the defendant serve a copy of the petition on the attorney for the Commonwealth concurrently with filing. This requirement is consistent with Rule 576(B)(1). The requirement for concurrent service ensures the attorney for the Commonwealth receives timely notice of the petition.

Paragraph (B) sets forth the procedures for the attorney for the Commonwealth and the judge to follow after the petition is filed and served. Paragraph (B)(1) provides that after the attorney for the Commonwealth receives the petition, he or she has 30 days within which to exercise one of three options for how to proceed. Recognizing that most summary cases are not complicated and do not have extensive court records to be reviewed, the Committee reasoned a 30-day time period was an adequate amount of time for the attorney for the Commonwealth to determine if he or she is going to consent to or object to a petition for summary case expungement. The attorney for the Commonwealth, of course, may take action in less than 30 days in a given case.

The attorney for the Commonwealth may file a consent to the petition, file an objection to the petition, or take no action. During its discussions, the Committee noted that there will be cases in which the attorney for the Commonwealth will agree with the defendant that the case should be expunged. In these cases, the Committee reasoned the attorney for the Commonwealth would want to move the

³ Pursuant to Rules 575 and 576, the petition must be filed with the clerk of courts first rather than taking the petition to a judge or the court administrator before filing.

⁴ It should be noted, however, that under local procedures implementing Rules 300 and 301, some magisterial district judges may have the authority to expunge summary ARD records after successful completion in the same manner as common pleas judges under Rule 320.

⁵ See the Rule 103 definition of "motion."

case along. Therefore, the “Commonwealth consents” language in the rules makes it clear that the attorney for the Commonwealth may affirmatively consent at any time after he or she receives the petition rather than allowing the full 30-day period to expire before proceeding. The “take no action” language also was added to the rule to address those cases in which the attorney for the Commonwealth determines that he or she is taking no position on the petition.

When the attorney for the Commonwealth takes action, he or she is required to file the consent or the objections with the clerk of courts. The attorney for the Commonwealth also must serve copies of the consent or objections on the petitioner’s attorney, or the petitioner if unrepresented.

Paragraph (B)(2) sets forth the procedures the judge is to follow in these cases. The judge is required to take action upon receipt of the attorney for the Commonwealth’s consent or objections, but in no case may the judge act later than fourteen days after the expiration of the 30-day time period in paragraph (B)(1). The issue of a time limit on the judge’s action was raised in the publication responses. The Committee debated at length adding a time limit on the judge’s action. Some members expressed concern that a time limit places too much of a burden on the judge. Other members expressed concern that without a time limit, these cases could languish. They also noted that the judge will have received a copy of the petition when the defendant files it, so the judge will be aware of the petition for at least 30 days before any time limit is applied. Ultimately, a 14-day time limit was included in the rule.

The judge has the discretion to enter an order granting the petition for expungement, to enter an order denying the petition, or to schedule a hearing. Although, in most cases, the judge will take action based on the petition and any response from the attorney for the Commonwealth without holding a hearing, the judge may identify issues with the petition or the attorney for the Commonwealth’s response that warrant holding a hearing to resolve.

Paragraph (B)(3) requires that, when a judge schedules a hearing, the parties must be given an opportunity to be heard. At the conclusion of the hearing, the judge is required to enter an order granting or denying the petition.

Paragraph (B)(4) addresses the procedures when the judge grants the petition. The judge must enter an order and the order must contain the contents required in paragraph (C). Paragraph (B)(4)(b) provides for the stay of the expungement order during the 30-day time period within which the attorney for the Commonwealth may file an appeal. If the attorney for the Commonwealth does file an appeal, then the order will be stayed pending the disposition of the appeal and further order of the court. Although providing for the stay during the time for taking an appeal will delay the defendant’s record being expunged, the stay is necessary, because, once the defendant’s records are expunged, the records cannot be retrieved.

Paragraph (B)(5) addresses the procedures when the judge denies the petition. The judge is required to enter an order denying the petition. The order must state the judge’s reasons for denying the petition. The judge’s reasons for the denial are necessary to make a record for appeal.

Paragraph (C) sets forth the contents of the expungement order. As previously explained, the information

required in paragraph (C) is the same as the information required in Rule 722. It should be noted that the judge is required to name in the order the criminal justice agencies upon which the certified copies of the order are to be served. In addition, paragraph (C)(2) requires the clerk of courts to serve the order on the criminal justice agencies listed in the order. Although the practice in some judicial districts is to require the defendant to provide the criminal justice agencies’ information for the order and to do the service of the order, this practice has been rejected because these functions are court functions, and the responsibility should not be placed on the defendant.⁶

The Comment provides further elaboration on the provisions of the new rule, including emphasizing the requirement in the rule that the list of information required in the petition and the order may not be modified by local rule or practice.

One of the concerns expressed to the Committee about the new summary case expungements under the CHRIA is that many defendants in summary cases will seek to have their records expunged without the assistance of counsel. Because of this, it was suggested that the new rule include the form of the expungement petition. The Committee, when considering this suggestion, noted that, except in a few cases in which the Committee agreed the identical form must be used in all judicial districts (*e.g.* Rule 632—juror information questionnaire), the Committee has not included the actual forms in the rules since the forms were deleted from the rules in 1985.⁷ The members agreed petitions to expunge a record do not fit into the category of forms that must be identical in all judicial districts, and declined to devise a form and include it in the rules. However, we did agree that having a form available for the use of petitioners is a sound idea. Accordingly, as explained in the Comment, the Administrative Office of Pennsylvania Courts will design a form, in consultation with the Committee as provided in Rule 104, that incorporates the required contents that are set forth in paragraph (A)(2). It is anticipated that this form will be easily accessible for petitioners.

Addressing one of the issues raised in the publication responses, the Comment includes a clarification about the procedures for expungement when a summary offense is joined with a misdemeanor or felony. Under the rules, when a summary offense is joined with misdemeanor or felony offenses, the case is a court case. Thus, in cases in which the summary offense has been joined with misdemeanor or felony charges, petitions to expunge these summary offenses must proceed under new Rule 790.

The Committee also discussed whether the rule should address standing to challenge expungement. The members agreed this was not something that should be addressed in the Criminal Rules, but thought it would be helpful if the Comment included a cross-reference to the cases on standing in the expungement context.

B. *New Rule 790*

Except when modification of language is necessary to conform with procedures for court cases,⁸ the provisions in paragraphs (A)(2), (A)(3), (A)(4), and (C) in new Rule 790 are the same as paragraphs (A)(2), (A)(3), (A)(4), and (C) in new Rule 490 discussed above.

⁶ See also Rule 114(D) prohibiting local rules requiring a party to file or serve orders and Rule 575(D) prohibiting any local rules requiring a party to attach a proposed order to a motion.

⁷ The Committee’s Report explaining the deletion of the forms was published at 13 Pa.B. 3813 (December 10, 1983).

⁸ For example, in paragraph (A)(2)(b), the defendant is required to provide in the petition the name of the judge of the court of common pleas rather than the magisterial district judge, and paragraph (A)(2)(e) requires the OTN, a number not assigned to summary cases.

Paragraph (A)(1) of new Rule 790 and the second paragraph of the Comment make it clear that court case ARD expungements are to proceed pursuant to Rule 320,⁹ and expungements arising under 35 P. S. § 780-119 are to proceed pursuant to that statute. Paragraph (A)(1) also requires the expungement petition to be filed with the clerk of courts in the judicial district in which the offenses were disposed.¹⁰

Paragraph (B) sets forth the procedures in court cases for the attorney for the Commonwealth to file a consent to the petition to expunge, any objections to the petition to expunge, and for the judge to take action. In court cases, the attorney for the Commonwealth is given 60 days to decide whether to file a consent, file objections, or to take no action on the petition. The attorney for the Commonwealth is afforded additional time in court cases because there may be more extensive records to review and more complicated issues to address. Paragraphs (B)(1) and (B)(2) incorporate the 60-day time period. In all other respects, paragraph (B) is the same as paragraph (B) in Rule 490 discussed above.

The Rule 790 Comment includes the same provisions that are in the Rule 490 Comment discussed above. One point the Committee discussed in the context of new Rule 790 is whether the order expunging a record under 35 P. S. § 780-119 must include the same contents as orders issued pursuant to new Rule 790. The AOPC representative to the Committee pointed out that currently, under Rule 722, these expungement orders do comply with Rule 722. Although cases under 35 P. S. § 780-119 are excluded from the application of the new rules, the Section 19 orders will continue to be required to include the same information as all other court case expungements, that is, the contents set forth in Rule 790(C) must be included in the Section 19 expungement order. To make this clear, a provision to that effect has been added to the fifth paragraph of the Rule 790 Comment.

[Pa.B. Doc. No. 10-1920. Filed for public inspection October 8, 2010, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 2, 3, 4, 5, 6,
11, 12, 13, 14, 15 AND 16]

Proposed Rules and Amendments for Procedures Regarding Advanced Communication Technology

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 120, 160, 242, 345, 394, 406, 512, 610, 1120, 1128, 1140, 1160, 1242, 1345, 1406, 1512, 1608; renumbering of Rules 130 to 136 and 1130 to 1136; and new Rules 129, 130, 1129 and 1130 be adopted and prescribed. These proposed modifications set forth the procedures regarding advanced communication technology.

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 Com-

⁹ This point also is addressed in the second paragraph of the proposed new Rule 490 Comment.

¹⁰ Pursuant to Rules 575 and 576, the petition must be filed with the clerk of courts first rather than taking the petition to a judge or the court administrator before filing.

ments 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 Friday, Nov. 5, 2010.

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 120. Definitions.

ADVANCED COMMUNICATION TECHNOLOGY is any communication equipment that is used as a link between parties in physically separate locations and includes, but is not limited to, systems providing for two-way simultaneous audio-visual communication; closed circuit television; telephone and facsimile equipment; and electronic mail.

ADULT is any person, other than a juvenile, eighteen years old or older.

AFFIANT is any responsible person, capable of taking an oath, who signs, swears to, affirms, or when permitted by these rules, verifies a written allegation and appreciates the nature and quality of that person's act.

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law or local practice to maintain the official court record and docket, without regard to that person's official title.

COPY is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means and includes, but is not limited to, copies reproduced by a photocopier, transmission using facsimile equipment, or by scanning into and printing out of a computer.

COURT is the Court of Common Pleas, a court of record, which is assigned to hear juvenile delinquency matters. Court shall include masters when they are

permitted to hear cases under these rules and magisterial district judges when issuing an arrest warrant pursuant to Rule 210. Juvenile Court shall have the same meaning as Court.

DETENTION FACILITY is any facility, privately or publicly owned and operated, designated by the court and approved by the Department of Public Welfare to detain a juvenile temporarily. The term detention facility, when used in these rules, shall include shelter-care.

DISPOSITION is a final determination made by the court after an adjudication of delinquency or any determination that ceases juvenile court action on a case.

ELECTRONIC FILING is the electronic transmission of a document to the clerk of courts for filing in a proceeding, including but not limited to, motions, proposed orders, requests, exhibits, and attachments, by means other than facsimile transmission.

ELECTRONIC SERVICE is the electronic transmission of a document to a party, attorney, or representative under these rules.

GUARDIAN is any parent, custodian, or other person who has legal custody of a juvenile, or person designated by the court to be a temporary guardian for purposes of a proceeding.

INTAKE STAFF is any responsible person taking custody of the juvenile on behalf of the court, detention facility, or medical facility.

ISSUING AUTHORITY is any public official having the power and authority of a magistrate, a Philadelphia bail commissioner, or a Magisterial District Judge.

JUVENILE is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MASTER is an attorney with delegated authority to hear and make recommendations for juvenile delinquency matters. Master has the same meaning as hearing officer.

MEDICAL FACILITY is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a juvenile medically or psychologically.

MINOR is any person, other than a juvenile, under the age of eighteen.

OFFICIAL COURT RECORD is the juvenile court file maintained by the clerk of courts which contains all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case.

ORDINANCE is a legislative enactment of a political subdivision.

PARTIES are the juvenile and the Commonwealth.

PENAL LAWS include all statutes and embodiments of the common law, which establish, create, or define crimes or offenses, including any ordinances that may provide for placement in a juvenile facility upon a finding of delinquency or upon failure to pay a fine or penalty.

PETITION is a formal document by which an attorney for the Commonwealth or the juvenile probation officer alleges a juvenile to be delinquent.

PETITIONER is an attorney for the Commonwealth or a juvenile probation officer, who signs, swears to, affirms, or verifies and files a petition.

PLACEMENT FACILITY is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation or program description, to receive delinquent juveniles as a case disposition. Placement facilities include, but are not limited to, residential facilities, group homes, after-school programs, and day programs, whether secure or non-secure.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of the person's employment.

POLITICAL SUBDIVISION shall mean county, city, township, borough, or incorporated town or village having legislative authority.

PROCEEDING is any stage in the juvenile delinquency process occurring once a written allegation has been submitted.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

VERIFICATION is a written statement made by a person that the information provided is true and correct to that person's personal knowledge, information, or belief and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

WRITTEN ALLEGATION is the document that is completed by a law enforcement officer or other person that is necessary to allege a juvenile has committed an act of delinquency.

Comment

"Clerk of courts" is the person given the power under state law or local practice to maintain the official court record. See Rule 166 for additional responsibilities of the clerk of courts.

Under the term "court," to determine if masters are permitted to hear cases, see Rule 187. See Rule 210 for the power of magisterial district judges to issue arrest warrants.

The term "disposition" includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on probation. It also includes other types of final determinations made by the court. Other final determinations include a finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case "with prejudice" prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

The "official court record" is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. The court may also designate any document to be a part of the record. It does not include items contained in juvenile probation's reports and files unless they are made a part of the official record by being filed with the clerk of courts.

Neither the definition of “law enforcement officer” nor the definition of “police officer” gives the power of arrest to any person who is not otherwise given that power by law.

A “petition” and a “written allegation” are two separate documents and serve two distinct functions. A “written allegation” is the document that initiates juvenile delinquency proceedings. Usually, the “written allegation” will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. This document may have been formerly known as a “probable cause affidavit,” “complaint,” “police paper,” “charge form,” “allegation of delinquency,” or the like. Once this document is submitted, a preliminary determination of the juvenile court’s jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

For definition of “delinquent act,” see 42 Pa.C.S. § 6302.

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 37 Pa.B. 1483 (April 7, 2007).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendment to Rule 120 published with the Court’s Order at 39 Pa.B. 4743 (August 8, 2009).

Rule 129. [Open Proceedings (Reserved)] Appearance by Advanced Communication Technology.

A. Generally. The juvenile or a witness may appear at a proceeding by utilizing advanced communication technology. At a minimum, the juvenile shall appear in person at least once a year.

B. Requirements. Advanced communication technology shall be utilized only upon:

- 1) direction or approval of the court; and
- 2) good cause shown or by agreement of the parties.

C. Counsel.

1) The juvenile shall be permitted to confer with counsel before entering into an agreement under paragraph (B)(2).

2) The juvenile shall be permitted to communicate fully and confidentially with counsel immediately prior to and during the proceeding.

Comment

Paragraph (A) requires that every juvenile is to appear in court at least once a year. This includes

juveniles who are not removed from their homes but who are under the court’s supervision. *See also* Rule 610 for requirements of dispositional and commitment review hearings.

It is best practice to conduct hearings every three months and for the judge to see the juvenile in person every six months, especially if a long-term disposition is anticipated.

This rule is not intended to compel the use of advanced communication technology but rather permit the use of appearance by telephone or by a system providing two-way simultaneous audiovisual communication. Advanced communication technology may be utilized for the convenience of witnesses; efficient use of resources; or when a party or witness has an illness, is incarcerated, or at a remote location.

Pursuant to paragraph (C)(2), the juvenile is to be permitted to confer with counsel privately. The juvenile is to be afforded all the same rights as if the hearing was held with all parties present in the courtroom.

Rule 130. [Public Discussion by Court Personnel of Pending Matters] Court Fees Prohibited for Advanced Communication Technology.

[All court personnel including, among others, juvenile probation officers, court clerks, bailiffs, tipstaffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending juvenile case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.]

The court shall not impose any fees upon a party or witness for utilizing advanced communication technology.

Comment

See March 13, 2002 Order of the Supreme Court of Pennsylvania (No. 241 Judicial Administration; Doc. No. 1) which provides that no fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology.

Rule 136. Public Discussion by Court Personnel of Pending Matters.

All court personnel including, among others, juvenile probation officers, court clerks, bailiffs, tipstaffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending juvenile case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.

Rule 140. Bench Warrants for Failure to Appear at Hearings.

A. Issuance of warrant.

1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.

2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

B. Entry of warrant information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.

C. Juvenile.

1) *Where to take the juvenile.*

a) When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

b) If the juvenile is not brought before a judge, the juvenile shall be released unless:

i) the warrant specifically orders detention of the juvenile; or

ii) there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.

c) If a juvenile is detained, the juvenile shall be detained in a detention facility or other facility designated in the bench warrant by the judge pending a hearing.

2) *Prompt hearing.*

a) If a juvenile is detained pursuant to a specific order in the bench warrant, the juvenile shall be brought before the judge who issued the warrant, a judge designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (C)(4) within seventy-two hours.

b) If the juvenile is not brought before a judge within this time, the juvenile shall be released.

3) *Notification of guardian.* If a juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a juvenile is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) Arrangements to transport the juvenile shall be made immediately.

c) If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge of the county where the juvenile is found.

d) The judge will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the juvenile to the county of issuance.

5) *Time requirements.* The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

D. Witnesses.

1) *Where to take the witness.*

a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge, the witness shall be released unless the warrant specifically orders detention of the witness.

c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order detention of the witness pending a hearing.

1) *Minor.* If a detained witness is a minor, the witness shall be detained in a detention facility.

2) *Adult.* If a detained witness is an adult, the witness shall be detained at the county jail.

2) *Prompt hearing.*

a) If a witness is detained pursuant to paragraph (D)(1)(c) or brought back to the county of issuance pursuant to paragraph (D)(4)(f), the witness shall be brought before the judge by the next business day.

b) If the witness is not brought before a judge within this time, the witness shall be released.

3) *Notification of guardian.* If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) The witness shall be taken without unnecessary delay and within the next business day to a judge of the county where the witness is found.

c) The judge will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order that arrangements be made to transport the witness to the county of issuance.

d) Arrangements to transport the witness shall be made immediately.

e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

i) *Minor.* If the witness is a minor, the witness may be detained in an out-of-county detention facility.

ii) *Adult.* If the witness is an adult, the witness may be detained in an out-of-county jail.

f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

g) If the time requirements of this paragraph are not met, the witness shall be released.

E. Advanced Communication Technology. A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.

F. Return and execution of the warrant for juveniles and witnesses.

1) The bench warrant shall be executed without unnecessary delay.

2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.

3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

4) Upon the return of the warrant, the judge shall vacate the bench warrant.

5) Once the warrant is vacated, the juvenile probation officer or other court designee shall remove or request that a law enforcement officer remove the bench warrant in all appropriate registries.

Comment

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure in these rules are to be followed if a juvenile is detained. *See* Chapter Two, Part D.

Pursuant to paragraph (C), the “juvenile” is the subject of the delinquency proceedings. When a witness is a child, the witness is referred to as a “minor.” This distinction is made to differentiate between children who are alleged delinquents and children who are witnesses. *See* paragraph (C) for alleged delinquents and paragraph (D) for witnesses. *See* also Rule 120 for definition of “juvenile” and “minor.”

Pursuant to paragraph (C)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (C)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility, the juvenile may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph (C)(2)(a). The juvenile is not to languish in a detention facility. Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. *See* paragraph (C)(2)(b).

Under paragraphs (C)(2) and (C)(4), a juvenile taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the juvenile is found. *See* Rule 240(C).

Pursuant to paragraph (C)(4), the juvenile may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph (C)(5), the time requirements of all other rules are to apply to juveniles who are detained. *See, e.g.,* Rules 240, 391, 404, 510, and 605.

Pursuant to paragraph (D)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (D)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (D)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (D)(2) is to be held by the next business day or the witness is to be released. *See* paragraph (D)(2)(b).

Pursuant to paragraph (D)(4)(b), a witness is to be brought before an out-of-county judge by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to be brought before the judge who issued the bench warrant by the next business day. *See* paragraph (D)(4)(f).

Pursuant to paragraph [(E)(2)] (F)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. *See* paragraph [(E)(3)] (F)(3).

Pursuant to paragraph [(E)(4)] (F)(4), the bench warrant is to be vacated after the return of the warrant is executed. “Vacated” is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph [(E)(5)] (F)(5), once the warrant is vacated, the juvenile probation officer, other court designee, or law enforcement officer is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

See 42 Pa.C.S. § 4132 for punishment of contempt for juveniles and witnesses.

Rule 141. Bench Warrants for Absconders.

A. Issuance of warrant. The juvenile probation officer shall immediately notify the court upon notification or recognition that a juvenile has absconded from the supervision of the court. The court may issue a bench warrant for the juvenile.

B. Entry of warrant information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.

C. Where to take the juvenile. The juvenile shall be detained in a detention facility or other facility designated in the bench warrant pending a hearing pursuant to paragraph (D).

D. Prompt hearing.

1) The juvenile shall have a detention hearing within seventy-two hours of the placement in detention.

2) A juvenile may appear by utilizing advanced communication technology pursuant to Rule 129.

E. *Time requirements.* The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

F. *Notification of guardian.* When the juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile's guardian of the juvenile's whereabouts and the reasons for the issuance of the bench warrant.

G. *Return and execution of the warrant.*

1) The bench warrant shall be executed without unnecessary delay.

2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.

3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

4) Upon the return of the warrant, the judge shall vacate the bench warrant.

5) Once the warrant is vacated, the court shall order the probation officer or other court designee to remove or request that a law enforcement officer remove the warrant from all appropriate registries.

Comment

Pursuant to paragraph (A), when a juvenile: 1) escapes from a placement facility, detention facility, shelter care facility, foster-care, or other court-ordered program or placement; 2) fails to report to juvenile probation; 3) cannot be located by juvenile probation; or 4) otherwise leaves the jurisdiction of the court, the court may issue a warrant for the juvenile.

Pursuant to paragraph (B), the court is to notify the juvenile probation officer or another court designee to enter or request that a law enforcement officer enter the bench warrant in all appropriate registries, such as JNET, CLEAN, PCIC, and NCIC.

Pursuant to paragraph (C), the juvenile is to be detained in a detention facility or any other facility designated in the bench warrant. If a juvenile is taken into custody pursuant to the bench warrant in a county other than the county of issuance, the juvenile is to be transported back to the county of issuance prior to the seventy-two-hour detention hearing mandated pursuant to paragraph (D)(1).

Pursuant to paragraphs (D)(1) and (E), the time requirements of the Rules of Juvenile Court Procedure are to apply, including the seventy-two hour detention hearing. *See, e.g.*, Rules 240, 391, 404, 510, and 605.

The arresting officer is to notify the juvenile's guardian of the arrest, the reasons for the arrest, and the juvenile's whereabouts under paragraph (F).

Pursuant to paragraph (G)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. *See* paragraph (G)(3).

Pursuant to paragraph (G)(4), the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph (G)(5), once the warrant is vacated, the juvenile probation officer or other court designee is to remove the warrant or request that a law enforcement officer remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 160. Inspection of the Official Court Record.

A. *General Rule.* The official court record is only open to inspection by:

1) the judges, masters, juvenile probation officers, and staff of the court;

2) the attorney for the Commonwealth, the juvenile's attorney, and the juvenile, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information, except at the discretion of the court;

3) a public or private agency or institution providing supervision or having custody of the juvenile under order of the court;

4) a court, its probation officers, other officials or professional staff, and the attorney for the defendant for use in preparing a pre-sentence report in a criminal case in which the defendant is convicted and the defendant previously was adjudicated delinquent;

5) a judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions, orders resulting from dispositional review hearings, and histories of bench warrants and escapes;

6) the Administrative Office of Pennsylvania Courts;

7) the judges, juvenile probation officers, and staff of courts of other jurisdictions when necessary for the discharge of their official duties;

8) officials of the Department of Corrections, a state correctional institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

9) a parole board, court, or county probation official in considering an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

10) the State Sexual Offenders Assessment Board for use in completing assessments; and

11) with leave of court, any other person, agency, or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

B. *Public availability.* Upon request, a public document shall be created by the clerk of courts if the case is designated eligible for public inspection pursuant to Rule 330 or 515.

1) For cases deemed eligible pursuant to Rule 330, the public document shall contain only the following information:

- a) the juvenile's name;
- b) the juvenile's age;
- c) the juvenile's address; and
- d) the offenses alleged in the juvenile's petition.

2) For cases deemed eligible pursuant to Rule 515, the public document shall contain only the following information:

- a) the juvenile's name;
- b) the juvenile's age;
- c) the juvenile's address;
- d) the offenses alleged in the juvenile's petition;
- e) the adjudication on each allegation; and
- f) the disposition of the case.

C. Electronic records. Unless authorized by the court, there shall be no public access to juvenile case records maintained in electronic format in the court information systems.

Comment

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile's file and 42 Pa.C.S. § 6352.1 for disclosure of treatment records.

See Rule 120 for definition of the "official court record."

This rule is meant to include the contents of the official court record as described in Rule 166.

When delinquency proceedings are commenced pursuant to Rule 200(4), the entire criminal court file is to be transferred with the case to juvenile court. This criminal case file is now the juvenile court file, which is the official court record, and the disclosure requirements of this rule apply.

Under paragraph (B), there is one document for each eligible case that is open for public inspection. The public document should be clearly marked for employees of the clerks of courts' office as the only document available for inspection by the general public. All other information contained in the official court record is not open for public inspection but only open to inspection to the persons enumerated in paragraph (A).

See Rule 330 for designation of public availability status in the juvenile petition. See Rule 515 for designation of public availability status in the dispositional order.

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.* 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.* 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) *Presence at hearing.* 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.

5) Advanced Communication Technology. A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.

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.

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES
PART D(1). MOTION PROCEDURES

Rule 345. Filing and Service.

A. [*Filings*] *Generally*.

1) [*Generally*] *Filings*. Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

[2] a) *Clerk of courts' duties*. Except as provided in paragraph [(A)(3)] (A)(1)(b), the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

[3] b) *Filings by represented juveniles*. In any case in which a juvenile is represented by an attorney, if the juvenile submits for filing a written motion, notice, or document that has not been signed by the juvenile's attorney, the clerk of courts shall not file the motion, notice, or document in the official court record or make a docket entry, but shall forward it promptly to the juvenile's attorney.

2) *Service*. The party filing the document shall serve the other party concurrently with the filing.

3) *Proof of service*. All documents that are filed and served pursuant to this rule shall include a certificate of service.

B. *By Paper*.

[4] 1) *Method of filing*. Filing may be accomplished by:

- a) personal delivery to the clerk of courts; or
- b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

[B. *Service*.

1) *Generally*. The party filing the document shall serve the other party concurrently with the filing.]

2) *Method of service [to parties]*. Service on the parties shall be by:

- a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or
- b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or
- c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or
- d) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement.

C. [*Proof of service*. All documents that are filed and served pursuant to this rule shall include a certificate of service.] *Local Rule*. If a county has promulgated a local rule regarding electronic filing, the local rule shall comply with Rule 121 and include, at a minimum, provisions which address the following:

1) whether the electronic filing system is permissive or mandatory;

2) if a local rule provides that electronic filing is mandatory, the necessary technical assistance that will be provided to those parties lacking the capability to file documents electronically;

3) methods of accessing the electronic filing systems;

4) which proceedings and documents are subject to the local rule;

5) the specified formats in which all documents shall be submitted to the clerk of courts for filing;

6) the manner in which the clerk of courts will acknowledge receipt, including date and time, of the filed documents to the filing party;

7) the specific time deadline for making electronic filings;

8) the manner in which payment will occur and the costs of the electronic filing;

9) procedures for sending filing status messages to the filing party;

10) whether the clerk of courts will maintain an electronic file only or an electronic file and a hard copy file;

11) procedures for extending the filing time if there is a failure in the county's electronic filing system;

12) back-up procedures if there is a prolonged failure in the county's electronic filing system; and

13) any additional procedures, if necessary, to ensure the security of the website and electronic files.

D. *By Electronic Means or Facsimile Transmission*. Documents may be filed or served by electronic means and/or facsimile transmission if a county has promulgated a local rule permitting or mandating such filings and service.

1) *Electronic Filing*. If a county has promulgated a local rule pursuant to paragraph (C) and Rule 121, electronic filing shall be permitted or mandated.

a) Any document that is submitted for electronic filing shall be deemed the original document;

b) The electronic filing of a document constitutes a certification by the filing party that a hard copy was properly signed and, when applicable, verified;

c) The clerk of courts shall provide electronic access at all times;

d) The clerk of courts shall provide, through the electronic filing system, an acknowledgement of receipt of a document, including the date and time of receipt, in a form that can be printed for retention by the filing party;

e) If a document is not accepted for filing by the clerk of courts or electronic filing system, the clerk of courts or electronic filing system shall immediately notify the filing party of this fact and the reason(s); and

f) Except when caused by the failure of a county's electronic filing system, the filing party shall be responsible for any delay, disruption, interruption of the electronic signals, and legibility of the document that is electronically filed.

2) *Electronic service.*

a) If a person has electronically filed a document, then parties may be served by electronic service if the parties agree and provide electronic mail addresses to the court.

b) Service by electronic transmission is complete when a document is sent to:

i) the recipient's electronic mail address; or

ii) to the county's electronic filing system website, which in return sends a message to the recipient stating that the document has been filed and is available for review on the system's web site.

3) *Facsimile Transmission.*

a) A party may be served by facsimile transmission, if the parties agree and provide a telephone number for the facsimile transmission to the court.

b) The facsimile cover sheet shall include the:

i) names, firms, addresses, telephone numbers, facsimile telephone numbers of the party making service and the party being served;

ii) title(s) of the document being served; and

iii) number of pages transmitted.

c) Service by facsimile transmission is complete when a document is confirmed as sent.

Comment

See Rule 166 for maintaining records in the clerk of courts.

Under paragraph [(A)(2)] (A)(1)(a), the court is to designate a court official to process motions and other matters for appropriate scheduling and resolution.

Under paragraph [(B)] (A)(2), the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the juvenile, if unrepresented, by the clerk of courts as provided in Rule 167.

Pursuant to paragraph (C), a county may promulgate a local rule permitting or mandating electronic filing. The local rule is to provide specific guidelines on every aspect of the procedure and a means to accommodate those who may assistance during the process.

Specific time requirements are to be set under paragraph (C)(7). For example, the county is to specify whether a document is due at the close of the business day, listing the specific time, or whether the document is due by the end of the actual day at midnight.

Pursuant to paragraph (C)(12), the county is to implement back-up procedures due to a system failure.

Paragraph (D)(1) sets forth the requirements for electronic filings. Pursuant to paragraph (D)(1)(e), if the electronic filing system fails, the party is to be notified immediately. This notification could be an automatic transmission from the electronic filing system that the transmission failed or the clerk of courts may relay this fact to the filing party as soon as it is realized that there was a failure in the system.

If there was not a failure in a county's electronic filing system, all delays, disruptions, interruptions of electronic signals, and legibility of a document are to be the sole responsibility of the filing party. Any time requirements of these rules not met because of such errors are to be the sole responsibility of the filing party. The filing party should ensure the receipt of electronic filing pursuant to paragraph (D)(1)(d) to alleviate any concerns.

Pursuant to paragraph (D)(2) & (3), a party may be served by electronic service or facsimile transmission. If the parties have agreed to electronic service, the attorneys are to provide the court with an electronic mail address or phone number for facsimile transmission.

This rule is not intended to compel the use of electronic filing. The purpose of this rule is not to provide a comprehensive manual but, rather, a framework upon which a local court can proceed with the electronic filing and service of legal papers, while allowing the flexibility to adapt the process on the basis of actual experience.

See Rule 121 for procedures of local rules.

For service of petitions, see Rule 331.

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. *Advanced Communication Technology.* A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.

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; and

5) 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.

CHAPTER 4. ADJUDICATORY HEARING

Rule 406. Adjudicatory Hearing

A. *Manner of hearing.* The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner.

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.

C. ***Advanced Communication Technology. A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.***

Comment

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

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 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.

3) ***Advanced Communication Technology. A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.***

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.

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

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**] conduct 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 the parties 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] A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.

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.

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 1120. Definitions.

ADVANCED COMMUNICATION TECHNOLOGY is any communication equipment that is used as a link between parties in physically separate locations and includes, but is not limited to, systems providing for two-way simultaneous audio-visual communication; closed circuit television; telephone and facsimile equipment; and electronic mail.

ADULT is any person, other than a child, eighteen years old or older.

AGGRAVATED CIRCUMSTANCES are those circumstances specifically defined pursuant to the Juvenile Act, 42 Pa.C.S. § 6302.

CHILD is a person who is under the age of eighteen who is the subject of the dependency petition, or who was adjudicated dependent before reaching the age of eighteen years and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall remain in a course of instruction or treatment past the age of twenty-one years.

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law or local practice to maintain the official court record and docket, without regard to that person's official title.

COPY is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means and includes, but is not limited to, copies reproduced by transmission using facsimile equipment, or by scanning into and printing out of a computer.

COUNTY AGENCY is the county children and youth social service agency established pursuant to the County Institution District Law, 62 Pa.C.S. § 2305 or established through the county commissioners in the judicial districts where the County Institution District Law was abolished, 16 P. S. §§ 2161, 2168, and supervised by the Department of Public Welfare pursuant to the Public Welfare Code, 62 Pa.C.S. § 901 *et seq.*

COURT is the Court of Common Pleas, a court of record, which is assigned to hear dependency matters. Court shall include masters when they are permitted to hear cases under these rules. Juvenile court shall have the same meaning as court.

ELECTRONIC FILING is the electronic transmission of a document filed in a proceeding, including but not limited to, motions, proposed orders, requests, exhibits, and attachments, by means other than facsimile transmission.

ELECTRONIC SERVICE is the electronic transmission of a document to a party, attorney, or representative under these rules.

FAMILY SERVICE PLAN is the document in which the county agency sets forth the service objectives for a family and services to be provided to a family by the county agency.

GUARDIAN is any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian for purposes of a proceeding.

JUDGE is a judge of the Court of Common Pleas.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MASTER is an attorney with delegated authority to hear and make recommendations for dependency matters. Master has the same meaning as hearing officer.

MEDICAL FACILITY is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a child medically or psychologically.

MINOR is any person under the age of eighteen.

OFFICIAL COURT RECORD is the juvenile court file maintained by the clerk of courts which contains all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each case.

PARTY is a person who is legally entitled to participate in the proceedings but nothing in these Rules confers standing upon a person.

PERMANENCY PLAN is a comprehensive plan that will result in a permanent home for the child.

PETITION is a formal document by which a child is alleged to be dependent.

PETITIONER is any person, who signs or verifies, and files a petition.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of that person's employment.

PROCEEDING is any stage in the dependency process occurring once a shelter care application has been submitted or a petition has been filed.

PROTECTIVE CUSTODY is when a child is taken into custody for protection as an alleged dependent child pursuant to the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* or custody may be assumed pursuant to 23 Pa.C.S. § 6315.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

SHELTER CARE FACILITY is a physically unrestricted facility that provides temporary care of a child and is approved by the Department of Public Welfare.

VERIFICATION is a written statement made by a person that the information provided is true and correct to that person's personal knowledge, information, or belief and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Comment

The county agency is a party to the proceeding and should not function as the "Clerk of Courts."

The definition of "clerk of courts" should not necessarily be interpreted to mean the office of clerk of courts as set forth in 42 Pa.C.S. § 102, but instead refers to that official who maintains the official court record and docket regardless of the person's official title in each judicial district. It is to be determined locally which official is to maintain these records and the associated docket.

The county institution districts in counties of the fourth, fifth, sixth, seventh, and eighth classes were abolished pursuant to 16 P.S. § 2161. It is the county commissioners' duties in the fourth, fifth, sixth, seventh, and eighth classes to provide the children and youth social service agency with the necessary services for the agency to provide care for the child. See 16 P.S. § 2168.

Under the term "court," to determine if masters are permitted to hear cases, see Rule 1187.

For the family service plan, see 55 Pa. Code § 3130.61

The definition of "law enforcement officer" does not give the power of arrest to any person who is not otherwise given that power by law.

The "official court record" is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each case. The court may also designate any document to be a part of the record. It does not include items contained in county agency's records unless they are made a part of the official record by being filed with the clerk of courts.

The term "petitioner" may include any person; however, if the person is not the county agency, an application to file a petition pursuant to Rule 1320 is to be made. If the court, after a hearing, grants the application, the applicant may file a petition.

Rule 1128. Presence at Proceedings.

A. *General Rule.* All parties shall be present at any proceeding unless the exceptions of paragraph (B) apply.

B. *Exceptions.*

1) *Absence from proceedings.* The court may proceed in the absence of a party upon good cause shown except that in no case shall a hearing occur in the absence of a child's attorney. If a child has a guardian *ad litem* and legal counsel, both attorneys shall be present.

2) *Exclusion from proceedings.* A party may be excluded from a proceeding only for good cause shown. If a party is so excluded, counsel for the party shall be permitted to be present.

C. *Advanced Communication Technology.* A child or guardian may appear by utilizing advanced communication technology pursuant to Rule 1129.

D. *Order appearance.* The court may order any person having the physical custody or control of a child to bring the child to any proceeding.

Comment

Under paragraph (B)(1), if a child is an infant, that would qualify as good cause. In no case is a proceeding to occur in the absence of the child's attorney. The court has discretion whether to proceed if the court finds that a party received proper notice of the hearing and has willfully failed to appear.

See *In re Adoption of S.B.B. and E.P.R.*, 372 Pa.Super. 456, 539 A.2d 883 (1988).

Nothing in these rules creates a right of a child to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

Official Note: Rule 1128 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1128 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

Rule 1129. [Open Proceedings (Reserved)] Appearance by Advanced Communication Technology.

A. *Generally.* The child, guardian, or a witness may appear at a proceeding by utilizing advanced communication technology.

B. *Requirements.* Advanced communication technology shall be utilized only upon:

- 1) direction or approval of the court; and
- 2) good cause shown or by agreement of the parties.

C. *Counsel.*

1) The child or guardian shall be permitted to confer with counsel before entering into an agreement under paragraph (A)(2).

2) The child shall be permitted to communicate fully and confidentially with counsel immediately prior to and during the proceeding.

Comment

Paragraph (A) requires that every child is to appear in court at least once a year. There may be instances in which the child is excused from attending pursuant to Rule 1128; for example, the child is too young.

It is best practice to conduct hearings every three months and for the judge to see the child and guardian in person every six months.

This rule is not intended to compel the use of advanced communication technology but rather permit the use of appearance by telephone or by a system providing two-way simultaneous audio-visual communication. Advanced communication technology may be utilized for the convenience for witnesses; efficient use of resources; or when a party or witness has an illness, is incarcerated, or at a remote location.

Pursuant to paragraph (C), the child or guardian is to be given time to confer with counsel privately. The child is to be afforded all the same rights as if the hearing was held with all parties present in the courtroom.

Rule 1130. [Public Discussion by Court Personnel of Pending Matters] Court Fees Prohibited for Advanced Communication Technology.

[All court personnel including, among others, court clerks, bailiffs, tipstiffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending dependency case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.]

The court shall not impose any fees upon any party or witness for utilizing advanced communication technology.

Comment

See March 13, 2002 Order of the Supreme Court of Pennsylvania (No. 241 Judicial Administration; Doc. No. 1) which provides that no fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology.

Rule 1136. Public Discussion by Court Personnel of Pending Matters.

All court personnel including, among others, court clerks, bailiffs, tipstiffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending dependency case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.

Rule 1140. Bench Warrants for Failure to Appear.

A. Issuance of warrant.

1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.

2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

B. Party.

1) *Where to take the party.*

a) When a party is taken into custody pursuant to a bench warrant, the party shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

b) If the party is not brought before a judge, the party shall be released unless the warrant specifically orders detention of the party.

c) If the warrant specifically orders detention of a party, the party shall be detained pending a hearing.

i) *Minor.* If the party is a minor, the party shall be detained in a shelter-care facility or other placement as deemed appropriate by the judge.

ii) *Adult.* If the party is an adult, the witness shall be detained at the county jail.

2) *Prompt hearing.*

a) If a party is detained pursuant to a specific order in the bench warrant, the party shall be brought before the judge who issued the warrant, a judge designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (B)(4) within seventy-two hours.

b) If the party is not brought before a judge within this time, the party shall be released.

3) *Notification of guardian.* If a party is a child and is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the child's guardian of the child's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a party is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) Arrangements to transport the party shall be made immediately.

c) If transportation cannot be arranged immediately, then the party shall be taken without unnecessary delay to a judge of the county where the party is found.

d) The judge will identify the party as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the party to the county of issuance.

5) *Time requirements.* The time requirements of Rules 1242, 1404, 1510, and 1607 shall be followed.

C. Witnesses.

1) *Where to take the witness.*

a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge, the witness shall be released unless the warrant specifically orders detention of the witness.

c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge may order detention of the witness pending a hearing.

i) *Minor*. If a detained witness is a minor, the witness shall be detained in a shelter-care facility or other placement as deemed appropriate by the judge.

ii) *Adult*. If a detained witness is an adult, the witness shall be detained at the county jail.

2) *Prompt hearing*.

a) If a witness is detained pursuant to paragraph (C)(1)(c) or brought back to the county of issuance pursuant to paragraph (C)(4)(f), the witness shall be brought before the judge by the next business day.

b) If the witness is not brought before a judge within this time, the witness shall be released.

3) *Notification of guardian*. If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody*.

a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) The witness shall be taken without unnecessary delay and within the next business day to a judge of the county where the witness is found.

c) The judge will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order that arrangements be made to transport the witness to the county of issuance.

d) Arrangements to transport the witness shall be made immediately.

e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

i) *Minor*. If the witness is a minor, the witness may be detained in an out-of-county shelter-care facility or other placement as deemed appropriate by the judge.

ii) *Adult*. If the witness is an adult, the witness may be detained in an out-of-county jail.

f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

g) If the time requirements of this paragraph are not met, the witness shall be released.

D. Advanced Communication Technology. A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.

E. Return & execution of the warrant for parties and witnesses.

1) The bench warrant shall be executed without unnecessary delay.

2) The bench warrant shall be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear bench warrants.

3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

4) Upon the return of the warrant, the judge shall vacate the bench warrant.

Comment

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 1800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the party or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. The normal rules of procedure in these rules are to be followed if a child is detained. *See* Chapter Twelve, Part D.

Pursuant to paragraph (B)(1)(a), the party is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (B)(1)(b), if a bench warrant specifically provides that the party may be detained, the party may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph (B)(2)(a). Pursuant to this paragraph, if a hearing is not held promptly, the party is to be released. *See* paragraph (B)(2)(b).

In paragraphs (B)(1)(c)(i), (C)(1)(c)(i), & (C)(4)(e)(i), "other placement as deemed appropriate by the judge" does not include a detention facility if a child is only alleged to be dependent because the use of detention facilities for dependent children is strictly prohibited. *See* 42 Pa.C.S. §§ 6302 & 6327(e).

Under paragraphs (B)(2) and (B)(4), a party taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the party is found. *See* Rule 1242(D).

Pursuant to paragraph (B)(4), the party may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph (B)(5), the time requirements of all other rules are to apply to children who are detained. *See, e.g.,* Rules 1242, 1404, 1510, and 1607.

Pursuant to paragraph (C)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (C)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (C)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (C)(2) is to be held by the next business day or the witness is to be released. *See* paragraph (C)(2)(b).

Pursuant to paragraph (C)(4)(b), a witness is to be brought before an out-of-county judge by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the

bench warrant, the witness is to be brought before the judge who issued the bench warrant by the next business day. *See* paragraph (C)(4)(f).

Pursuant to paragraph [(D)(2)] (E)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. *See* paragraph [(D)(3)] (E)(3).

Pursuant to paragraph [(D)(4)] (E)(4), the bench warrant is to be vacated after the return of the warrant is executed so the party or witness is not taken into custody on the same warrant if the party or witness is released. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

See 42 Pa.C.S. § 4132 for punishment of contempt for children and witnesses.

Throughout these rules, the "child" is the subject of the dependency proceedings. When a witness or another party is under the age of eighteen, the witness or party is referred to as a "minor." When "minor" is used, it may include a child. This distinction is made to differentiate between children who are alleged dependants and other minors who are witnesses. *See* also Rule 1120 for the definitions of "child" and "minor."

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE COURT RECORDS

Rule 1160. Inspection of the Official Court Record.

A. General Rule. The official court record is only open to inspection by:

- 1) The judges, officers, and professional staff of the court;
- 2) The parties to the proceeding and their counsel and representatives, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;
- 3) A public or private agency or institution providing supervision or having custody of the child under order of the court;
- 4) A court, its probation officers, other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*;
- 5) The Administrative Office of Pennsylvania Courts;
- 6) The judges, officers and professional staff of courts of other jurisdictions when necessary for the discharge of their official duties;
- 7) Officials of the Department of Corrections or a State Correctional Institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

8) A parole board, court or county probation official in considering an individual's parole or in exercising supervision over any individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.

9) The State Sexual Offenders Assessment Board for use in completing assessments; and

10) With leave of court, any other person or agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

B. Electronic records. Unless authorized by the court, there shall be no public access to juvenile case records maintained in electronic format in the court information systems.

Comment

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of all files and records of the court in a proceeding.

Persons specified in 23 Pa.C.S. § 6340 as having access to reports may qualify as persons having a legitimate interest in the proceedings under paragraph (10). *See* 23 Pa.C.S. § 6340.

This rule is meant to include the contents of the official court record as described in Rule 1166, which does not include agency records.

Official Note: Rule 1160 adopted August, 21, 2006, effective February 1, 2007. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1160 published with the Court's Order at 36 Pa.B. [5571] 5599 (September 2, 2006).

Final Report explaining the amendments to Rule 1160 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

CHAPTER 12. COMMENCEMENT OF PROCEEDINGS, EMERGENCY CUSTODY, AND PRE-ADJUDICATORY PLACEMENT

PART C. SHELTER CARE

Rule 1242. General Conduct of Shelter Care Hearing.

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

- 1) a copy of the shelter care application is provided to the parties; and
- 2) all parties are informed of the right to counsel.

B. Manner of hearing.

- 1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.
- 2) *Recording.* If requested, 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 child's attorney, the guardian, if unrepresented, and the attorney

for the guardian shall be afforded an opportunity to examine and controvert written reports so received.

4) *Advanced Communication Technology.* A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.

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

1) there are sufficient facts in support of the shelter care application;

2) custody of the child is warranted;

3) a) remaining in the home would be contrary to the welfare and best interests of the child;

b) reasonable efforts were made by the county agency to prevent the child's placement; or

c) in the case of an emergency placement where services were not offered, whether the lack of efforts were reasonable; and

4) if a shelter care application is submitted by a person other than the county agency, the court shall make a determination if the person is a party to the proceedings.

D. *Prompt hearing.* The court shall conduct a hearing within seventy-two hours of taking the child into protective custody.

E. *Court order.* At the conclusion of the shelter care hearing, the court shall enter a written order as to the following:

1) its findings pursuant to paragraph (C);

2) any conditions placed upon any party;

3) any orders for placement or temporary care of the child; and

4) any orders of visitation.

Comment

Under paragraph (C)(4), the court is to determine whether or not a person is a proper party to the proceedings. Regardless of the court's findings on the party status, the court is to determine if the application is supported by sufficient evidence.

Under paragraph (D), the court is to ensure a timely hearing.

Under paragraph (E), the court is to include in its order specific findings that: 1) there are sufficient facts in support of the dependency petition; 2) custody of the child is warranted; and 3) remaining in the home would be contrary to the welfare and best interests of the child, or reasonable efforts were made by the county agency to prevent the child's placement, or in the case of an emergency placement where services were not offered, whether the lack of efforts were reasonable.

See 42 Pa.C.S. § 6332.

Nothing in this rule prohibits informal conferences, narrowing of issues, if necessary, and the court making appropriate orders to expedite the case through court. The shelter care hearing may be used as a vehicle to discuss the matters needed and narrow the issues. The court is to insure a timely adjudicatory hearing is held.

See 42 Pa.C.S. § 6339 for orders of physical and mental examinations and treatment.

See Rule 1330(A) for filing of a petition.

CHAPTER 13. PRE-ADJUDICATORY PROCEDURES

PART D(1). MOTION PROCEDURES

Rule 1345. Filing and Service.

A. [*Filings*] *Generally.*

1) [*Generally*] *Filings.* Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

[2] a) *Clerk of courts' duties.* Except as provided in paragraph [(A)(3)] (A)(1)(b), the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

[3] b) *Filings by represented parties.* In any case in which a party is represented by an attorney, if the party submits for filing a written motion, notice, or document that has not been signed by the party's attorney, the clerk of courts shall not file the motion, notice, or document in the child's official court record or make a docket entry, but shall forward it promptly to the party's attorney.

2) *Service.* **The party filing the document shall serve the other party(s) concurrently with the filing.**

3) *Proof of service.* **All documents that are filed and served pursuant to this rule shall include a certificate of service.**

B. *By Paper.*

[4] 1) *Method of filing.* Filing may be accomplished by:

a) personal delivery to the clerk of courts; or

b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

[B. *Service.*

1) *Generally.* **The party filing the document shall serve the other party concurrently with the filing.]**

2) *Method of service [to parties].* Service on the parties shall be by:

a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or

b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or

d) sending a copy to an unrepresented party by first class mail addressed to the party's place of residence.

C. [*Proof of service.* **All documents that are filed and served pursuant to this rule shall include a certificate of service.]** *Local Rule.* **If a county has promulgated a local rule regarding electronic filing, the local rule shall comply with Rule 121 and include, at a minimum, provisions which include the following:**

1) **whether the electronic filing system is permissive or mandatory;**

2) if a local rule provides that electronic filing is mandatory, the necessary technical assistance that will be provided to those parties lacking the capability to file documents electronically;

3) methods of accessing the electronic filing systems;

4) which proceedings and documents are subject to the local rule;

5) the specified formats in which all documents shall be submitted to the clerk of courts for filing;

6) the manner in which the clerk of courts will acknowledge receipt, including date and time, of the filed documents to the filing party;

7) the specific time deadline for making electronic filings;

8) the manner in which payment will occur and the costs of the electronic filing;

9) procedures for sending filing status messages to the filing party;

10) whether the clerk of courts will maintain an electronic file only or an electronic file and a hard copy file;

11) procedures for extending the filing time if there is a failure in the county's electronic filing system;

12) back-up procedures if there is a prolonged failure in the county's electronic filing system; and

13) any additional procedures, if necessary, to ensure the security of the website and electronic files.

D. By Electronic Means or Facsimile Transmission. Documents may be filed or served by electronic means and/or facsimile transmission if a county has promulgated a local rule permitting or mandating such filings and service.

1) *Electronic Filing.* If a county has promulgated a local rule pursuant to paragraph (C) and Rule 1121, electronic filing shall be permitted or mandated.

a) Any document that is submitted for electronic filing shall be deemed the original document;

b) The electronic filing of a document constitutes a certification by the filing party that a hard copy was properly signed and, when applicable, verified;

c) The clerk of courts shall provide electronic access at all times;

d) The clerk of courts shall provide, through the electronic filing system, an acknowledgement of receipt of a document, including the date and time of receipt, in a form that can be printed for retention by the filing party;

e) If a document is not accepted for filing by the clerk of courts or electronic filing system, the clerk of courts or electronic filing system shall immediately notify the filing party of this fact and the reason(s); and

f) Except when caused by the failure of a county's electronic filing system, the filing party shall be responsible for any delay, disruption, interruption of the electronic signals, and legibility of the document that is electronically filed.

2) *Electronic service.*

a) If a person has electronically filed a document, then parties may be served by electronic service if the parties agree and provide electronic mail addresses to the court.

b) Service by electronic transmission is complete when a document is sent to:

i) the recipient's electronic mail address; or

ii) to the county's electronic filing system website, which in return sends a message to the recipient stating that the document has been filed and is available for review on the system's website.

3) *Facsimile Transmission.*

a) A party may be served by facsimile transmission, if the parties agree and provide a telephone number for the facsimile transmission to the court.

b) The facsimile cover sheet shall include the:

i) the names, firms, addresses, telephone numbers, facsimile telephone numbers of the party making service and the party being served;

ii) the title(s) of the document being served; and

iii) the number of pages transmitted.

c) Service by facsimile transmission is complete when a document is confirmed as sent.

Comment

See Rule 1166 for maintaining records in the clerk of courts.

Under paragraph [(A)(2)] (A)(1)(a), the court is to designate a court official to process motions and other matters for appropriate scheduling and resolution.

Under paragraph [(B)(1)] (A)(2), the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the guardian, if unrepresented, by the clerk of courts as provided in Rule 1167.

Pursuant to paragraph (C), a county may promulgate a local rule permitting or mandating electronic filing. The local rule is to provide specific guidelines on every aspect of the procedure and a means to accommodate those who may assistance during the process.

Specific time requirements are to be set under paragraph (C)(7). For example, the county is to specify whether a document is due at the close of the business day, listing the specific time, or whether the document is due by the end of the actual day at midnight.

Pursuant to paragraph (C)(12), the county is to implement back-up procedures due to a system failure.

Paragraph (D)(1) sets forth the requirements for electronic filings. Pursuant to paragraph (D)(1)(e), if the electronic filing system fails, the party is to be notified immediately. This notification could be an automatic transmission from the electronic filing system that the transmission failed or the clerk of courts may relay this fact to the filing party as soon as it is realized that there was a failure in the system.

If there was not a failure in a county's electronic filing system, all delays, disruptions, interruptions of electronic signals, and legibility of a document are to be the sole responsibility of the filing party. Any time requirements of these rules not met because of such errors are to be the sole responsibility of the filing party. The filing party should ensure the receipt of electronic filing pursuant to paragraph (D)(1)(d) to alleviate any concerns.

Pursuant to paragraph (D)(2) & (3), a party may be served by electronic service or facsimile transmission. If the parties have agreed to electronic service, the attorneys are to provide the court with an electronic mail address or phone number for facsimile transmission.

This rule is not intended to compel the use of electronic filing. The purpose of this rule is not to provide a comprehensive manual but, rather, a framework upon which a local court can proceed with the electronic filing and service of legal papers, while allowing the flexibility to adapt the process on the basis of actual experience.

See Rule 1121 for procedures of local rules.

For service of petitions, see Rule 1331.

CHAPTER 14. ADJUDICATORY HEARING

Rule 1406. Adjudicatory Hearing.

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

1) *Notification.* Prior to commencing the proceedings, the court shall ascertain:

[1] a) whether notice requirements pursuant to Rules 1360 and 1361 have been met; and

[2] b) whether unrepresented parties have been informed of the right to counsel pursuant to 42 Pa.C.S. § 6337.

2) *Advanced Communication Technology.* A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.

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

- 1) pursuant to a court order; or
- 2) when there is an appeal.

C. *Evidence.* Each party shall be given the opportunity to:

- 1) introduce evidence;
- 2) present testimony; and
- 3) to cross-examine any witness.

D. *Ex parte Communication.*

1) Except as provided by these rules, no person shall communicate with the court in any way.

2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

Comment

Due process requires that the litigants receive notice of the issues before the court and an opportunity to present their case in relation to those issues. *In re M.B.*, 356 Pa.Super. 257, 514 A.2d 599 (1986), *aff'd*, 517 Pa. 459, 538 A.2d 495 (1988).

A full record of the hearing is to be kept. *In re J.H.*, 788 A.2d 1006 (Pa. Super. Ct. 2001). See also 42 Pa.C.S. § 6336.

Under paragraph (B), notes of testimony should be provided to counsel for a party upon good cause shown. The court may place conditions of release on the notes of testimony. Under paragraph (B)(2), when an appeal is taken, the record is to be transcribed pursuant to Pa.R.A.P. 1922. See Pa.R.A.P. 1911 for request of transcript.

Under paragraph (C), the court is to receive evidence from all interested parties and from objective, disinterested witnesses. The judge's findings should be supported by a full discussion of the evidence. See *In Re Clouse*, 244 Pa.Super. 396, 368 A.2d 780 (1976).

For application of the Rules of Evidence, see Pa.R.E. 101.

Under paragraph (D), no *ex parte* communications regarding the facts and merits of the case with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, communications with court personnel, are not considered *ex parte* communications. See Pa.R.P.C. Rules 3.5, 3.3(d), and 8.3(a) and the Code of Judicial Conduct, Canons 1, 2, and 3.

CHAPTER 15. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 1512. 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 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 parent, child's foster parent, preadoptive parent, relative providing care for the child and court appointed special advocate, if assigned, an opportunity to make a statement.

3) *Advanced Communication Technology.* A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.

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

- 1) pursuant to a court order; or
- 2) when there is an appeal.

C. *Ex parte Communication.*

1) Except as provided by these rules, no person shall communicate with the court in any way.

2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

Comment

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

Paragraph (A)(2) does not infringe on the right to call witnesses to testify, in addition to those specified individuals. See Rule 1123 for subpoenaing a witness.

For transcription of the record under paragraph (B), see also Rule 1127.

Under paragraph (C), no *ex parte* communications with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, communications with court personnel, are not considered *ex parte* communications.

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B. PERMANENCY HEARING

Rule 1608. Permanency Hearing.

A. *Purpose of hearing.* For every case, the court shall conduct a permanency hearing for purposes of determining or reviewing:

- 1) the permanency plan of the child;
- 2) the date by which the goal of permanency for the child might be achieved; and
- 3) whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Court's findings.* At the permanency hearing, the court shall making findings consistent with 42 Pa.C.S. § 6351(f).

C. *Recording.* The permanency hearing shall be recorded. The recording shall be transcribed:

- 1) pursuant to a court order; or
- 2) when there is an appeal.

D. *Evidence.*

1) Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court.

2) If a report was submitted pursuant to Rule 1604, the court shall review and consider the report as it would consider all other evidence.

E. *Advanced Communication Technology.* A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.

F. *Family Service Plan or Permanency Plan.* The county agency shall review the family service plan or permanency plan at least every six months. If the plan is modified, the county agency shall provide all parties and when requested, the court, with the modified plan at least fifteen days prior to the permanency hearing.

Comment

See 42 Pa.C.S. §§ 6341, 6351.

Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the county agency to rehabilitate and reunite the family in a reasonable time, and failing in this, to free the child for adoption. *In re M.B.*, 449 Pa.Super. 507, 674 A.2d 702 (1996) quoting *In re Quick*, 384 Pa.Super. 412, 559 A.2d 42 (1989).

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

Under paragraph (B), the court is to make a finding consistent with 42 Pa.C.S. § 6351(f), in that the court is to determine all of the following: 1) the continuing necessity for and appropriateness of the placement; 2) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child; 3) the extent of progress made toward alleviating the circumstances which necessitated the original placement; 4) the appropriateness and feasibility of the current placement goal for the child; 5) the likely date by which the placement goal for the child might be achieved; 6) whether reasonable efforts were made to finalize the permanency plan in effect; 7) whether the child is safe; 8) if the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child; 9) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living; and 10) if the child has been in placement for at least fifteen of the last twenty-two months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a motion to terminate parental rights and to identify, recruit, process, and approve a qualified family to adopt the child unless: a) the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child; b) the county agency has documented a compelling reason for determining that filing a motion to terminate parental rights would not serve the needs and welfare of the child; or c) the child's family has not been provided with necessary services to achieve the safe return to the child's guardian within the time frames set forth in the permanency plan.

For family service plan requirements, see 55 Pa. Code §§ 3130.61 and 3130.63.

Explanatory Report

"The future is here." This statement has been used widely in the last decade by several companies to describe their state-of-the-art products and new technologies invented by their technical gurus.

As advanced technologies emerge while budgets continue to shrink, courts are increasingly utilizing new technologies to help manage their court systems, and to help reduce costs. However, costs are not the only benefit to new technology.

Witnesses, parents, and others, who could not previously attend a hearing, may now participate in the court process. In past years, a non-custodial parent in a remote

state prison would not participate in his or her child's hearing. Technology now allows a parent inmate to appear via video conference and participate in the proceedings. Expert witnesses, who otherwise were unavailable, can testify from across the world without any need for travel or waiting in courthouses for their cases to be called.

These proposed Rule additions and modifications begin to address the use of advanced communication technology in juvenile court and the procedures that must be followed when utilizing advanced communication technology.

These Rules provide that a juvenile, child, guardian, or witness may appear at a proceeding via advanced communication technology. However, pursuant to proposed Rules 129(B) and 1129(B), advanced communication technology may only be utilized upon: 1) direction of the court; and 2) good cause shown or by agreement of the parties. If a person wishes to appear in person, the court may not require participation via advanced communication technology.

Prior to agreeing to a hearing utilizing advanced communication technology, a juvenile or child must be permitted to consult with his or her attorney. In addition, the juvenile shall communicate fully with his or her attorney prior to and during the proceedings.

Many judicial districts are allowing attorneys to use their cell phones to speak privately with their client during a hearing. In other districts, the hearing room is being vacated so the juvenile or child can communicate with counsel.

In addition, courts across the country are developing techniques for allowing parties, including the juvenile or child, to speak in private with their attorneys during the proceedings. Judicial districts are encouraged generally to be creative in utilizing advanced communication technology; however, courts may not impose fees for the use of that technology. *See* new Rules 130 and 1130.

In addition, there shall be no *public* access to electronic juvenile case records. *See* Rules 160(C) and 1160(B). Once the public is given access to a case record through electronic means, it is impossible for the court to control the information and to retrieve it, when necessary.

Finally, Rules 345(C) and 1345(C) permit electronic filing if a judicial district has promulgated a local rule. *See* Rules 345 and 1345(C)(1)–(13). Rules 345(D) and 1345(D) set forth the procedures for electronic filing and service.

[Pa.B. Doc. No. 10-1921. Filed for public inspection October 8, 2010, 9:00 a.m.]

Title 25—LOCAL COURT RULES

FRANKLIN COUNTY

39th Judicial District Rule of Criminal Procedure Rule 1000; Administrative Doc. 6-2010

Order of Court

Now This 15th day of September 2010 it appearing that a "County-wide Booking Center Plan" has been adopted

by the County and the Criminal Justice Advisory Board pursuant to Section 1725.6 of the Judicial Code, 42 Pa.C.S.A. 1725.6,

It Is Hereby Ordered pursuant to Section 1725.5 of the Judicial Code that the Clerk of Courts shall assess in addition to any other fines, penalties or costs imposed by law, \$150.00 Booking Center Fund Fee against any person who is processed at any Booking Center in Franklin County on or after December 1, 2010 if the person is:

1. placed on probation without verdict pursuant to section 17 of the act of April 14, 1972 (P. L. 233, No. 64), known as The Controlled Substance, Drug, Device or Cosmetic Act; or

2. receives Accelerated Rehabilitative Disposition for, pleads guilty to or *nolo contendere* to or is convicted of a crime under the following:

a. 18 Pa.C.S. § 106(a) (relating to classes of offenses)

b. 75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence)

c. 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance)

d. A violation of The Controlled Substance, Drug, Device and Cosmetic Act.

The Booking Center Fee shall be paid to Franklin County Clerk of Courts or the Payment Division of the Franklin County Adult Probation Department and deposited into a special booking center fund established by the Franklin County Criminal Justice Advisory Board. Moneys in the fund shall be disbursed, pursuant to procedures promulgated by the Franklin County Criminal Justice Advisory Board and used solely for the implementation of a "County-wide Booking Center Plan" and the start-up, operation or maintenance of the regional booking centers.

The District Court Administrator will make appropriate distribution of this Order.

By the Court

DOUGLAS W. HERMAN,
President Judge

[Pa.B. Doc. No. 10-1922. Filed for public inspection October 8, 2010, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

In the Matter of the Adoption and Amendment of Local Rules of Civil Procedure; Misc. Doc. 2010- 4218

September 20th, 2010, *It Is Hereby Ordered* that the following Rules of the Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin and Fulton County Branches, Civil Division, are amended, rescinded or adopted as indicated this date, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Local Rule of Civil Procedure 212.7 is amended and shall now read as follows.

It Is Further Ordered that The District Court Administrator shall

1. Distribute two (2) certified paper copies and one (1) computer diskette or CD-ROM copy to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

2. File one (1) certified copy of the local rule changes with the Administrative Office of Pennsylvania Courts.

3. Provide one (1) certified copy of the local rule changes to the Supreme Court of Pennsylvania Civil Procedural Rules Committee.

4. Publish a copy of the local rule changes as required on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

5. Provide one (1) certified copy of the Local Rule changes to the Franklin County Law Library and one (1) certified copy to the Fulton County Law Library.

6. Keep such local rule changes, as well as all local civil rules, continuously available for public inspection and copying in the Office of the Prothonotary of Franklin County and the Office or the Prothonotary of Fulton County. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

7. Arrange to have the local rule changes published on the Franklin County Bar Association web site at www.franklinbar.org.

By the Court

DOUGLAS W. HERMAN,
President Judge

Local Rule 39-212.7. Scheduling Conference and Case Management.

(a) This Rule shall be applicable to all civil actions other than family law matters governed by Pa.R.C.P. 1901 through 1940.9, credit card collection cases, cases for and appeals from compulsory arbitration, administrative agency appeals, appeals from labor arbitration, landlord-tenant appeals, appeals from boards of view, mortgage foreclosures and cases in which judgment has been entered.

(b) In all cases to which this rule is applicable, the plaintiff shall, not later than sixty (60) days after service of the complaint upon defendant(s), file and transmit to the assigned judge a proposed order of court in substantially the following form:

Order of Court

(Date), the Complaint filed in this case having been served upon the Defendant(s),

IT IS HEREBY ORDERED that the Plaintiff shall initiate discussion among all parties who shall make a good faith effort to agree upon a proposed Joint Case Management Order which shall be submitted to the assigned judge not later than _____. In the event that the parties cannot agree upon a proposed Joint Case Management Order, they shall submit separate proposed Case Management Orders to the assigned judge in chambers not later than the foregoing date. After the foregoing date, the assigned judge may enter a Case Management Order or may schedule a Case Management Conference.

IT IS FURTHER ORDERED that in considering joint or separate proposed Case Management Orders, counsel and the parties shall be guided by the Court's guidelines set forth in the Note to Local Rule 212.7 and be prepared to support any requested deviation from such guidelines.

IT IS FURTHER ORDERED that the parties shall begin engaging in discovery pending the entry of a Case Management Order if they have not already done so; and that the Plaintiff promptly serve copies of this order upon all other parties.

By the Court,

J.

(c) Not later than 14 days after the deadline for the completion of discovery pursuant to any Case Management Order, Plaintiff's counsel shall arrange with the chambers of the assigned judge for a telephone conference between the Court and counsel for all parties for the express purpose of [1] making a good faith estimate as to the number of trial days—excluding jury selection date—that will be required for trial; [2] securing trial dates; and [3] considering mediation as a settlement tool.

NOTE: The purpose of the Court in adopting this Rule providing for case management is to better assure the progress of cases through the judicial system without unreasonable delay by fixing deadlines for completion of the various stages of cases. Deadlines, for example, for completion of discovery, the filing of expert reports, and the filing of dispositive motions, will be set at the scheduling conference. Thereafter, a party seeking extension of a deadline will have the burden of establishing good cause for such extension.

The following are guidelines for various types of cases:

CASE EVENT	SIMPE CASE (e.g. admitted liability, minimal discovery)	STANDARD (e.g. motor vehicle, contracts, some equity)	COMPLEX (e.g. product liability, some equity, extensive discovery)	MEDICAL MALPRACTICE
Discovery Completion	5 months	9 months	12 months	12 months
Plaintiff Expert Reports	6 months	10 months	13 months	13 months
Defense Expert Reports	7 months	11 months	14 months	14 months
Dispositive Motions	8 months	12 months	15 months	15 months
Pretrial Conference	10 months	14 months	17 months	17 months

[Pa.B. Doc. No. 10-1923. Filed for public inspection October 8, 2010, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

In the Matter of the Adoption and Amendment of Local Rules of Civil Procedure; Misc. Doc. 2010-4219

September 20, 2010, *It Is Hereby Ordered* that the following Rules of the Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin and Fulton County Branches, Civil Division, are amended, rescinded or adopted as indicated this date, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Local Rule of Civil Procedure 205.1.2 is rescinded and Rule 205.1(a) is adopted.

Local Rule of Civil Procedure 205.2(a) is adopted.

Local Rule of Civil Procedure 206.1(a) is amended and shall now read as follows.

Local Rule of Civil Procedure 206.4(c) is amended and shall now read as follows.

Local Rule of Civil Procedure 208.2 is amended and shall now read as follows.

Local Rule of Civil Procedure 208.3 is amended and shall now read as follows.

Local Rule of Civil Procedure 211 is amended and shall now read as follows.

It Is Further Ordered that The District Court Administrator shall

1. Distribute two (2) certified paper copies and one (1) computer diskette or CD-ROM copy to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

2. File one (1) certified copy of the local rule changes with the Administrative Office of Pennsylvania Courts.

3. Provide one (1) certified copy of the local rule changes to the Supreme Court of Pennsylvania Civil Procedural Rules Committee.

4. Publish a copy of the local rule changes as required on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

5. Provide one (1) certified copy of the Local Rule changes to the Franklin County Law Library and one (1) certified copy to the Fulton County Law Library.

6. Keep such local rule changes, as well as all local civil rules, continuously available for public inspection and copying in the Office of the Prothonotary of Franklin County and the Office of the Prothonotary of Fulton County. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

7. Arrange to have the local rule changes published on the Franklin County Bar Association web site at www.franklinbar.org.

By the Court

DOUGLAS W. HERMAN,
President Judge

Local Rule 211. Oral Arguments.

39-211.1 Except as otherwise provided by the Court, arguments in the Franklin County Branch shall be held on the first Thursday of each month excluding August, except when that Thursday is a legal holiday, in which case the argument shall be held on as scheduled by the Court; and in the Fulton County Branch, arguments shall

be held on days as established by the annual Court calendar or as scheduled by the Court.

39-211.2 In the Franklin County Branch, causes for argument shall be listed in the Prothonotary's office in a docket to be provided for that purpose, on or before the Thursday which is six (6) weeks preceding the day for argument. Any party may list a cause by filing a Praeceptum directing the Prothonotary to list the cause for argument. In the Fulton County Branch, causes for argument may be listed in the Prothonotary's office in a docket to be provided for that purpose upon Praeceptum of a party filed at least six (6) weeks before the argument is to be scheduled before the assigned judge. The party entering a cause for argument shall forthwith, by ordinary mail, notify all other parties that the cause has been listed for argument; and shall file proof of service of such notice. Failure to give such notice shall be grounds for striking the cause from the list upon Motion.

39-211.3 The parties may agree in writing to add a cause to the argument list at any time so long as service of briefs may be made in accordance with the time requirements of Rule 39-211.7. The Court may order a cause listed for argument at the next scheduled argument court or on such other day as it may direct and, in that event, it may set the time for service of briefs.

39-211.4 When the ascertainment of facts is necessary for the proper disposition of a cause listed for argument, such facts may be determined by deposition or as otherwise provided in the Pennsylvania Rules of Civil Procedure.

39-211.5 The person seeking the order applied for shall argue first, and may also argue in rebuttal, if permitted by the Court, but such rebuttal shall be limited to answering arguments advanced by the opposing party. In causes where there is more than one responding party, the order of argument by the responding parties shall be as directed by the Court.

39-211.6 Each party shall furnish to every other party a typewritten brief in the form set forth in Local Rule 210, Form and content of Briefs.

39-211.7 When a case is listed for argument, the moving party shall file and serve a copy of his brief upon all other parties in the manner set forth in Pa.R.C.P. 440(a) to insure receipt by the responding party not later than the thirty-fifth (35th) day preceding the day scheduled for argument. The responding party shall, in return, serve a copy of his brief upon the moving party in the manner set forth in Pa.R.C.P. 440(a) to insure receipt by the moving party not later than the twenty-eighth (28th) day preceding the day scheduled for argument. At the time each party serves his brief, he shall furnish two copies thereof to the assigned judge.

39-211.8 Unless the time for filing and serving briefs is extended by the Court for cause shown, where briefs have not been timely filed and served as required by Rule 39-211.7, the Court may upon its own motion or upon request of a party:

- (1) Deny the relief requested where the moving party has failed to comply;
- (2) Grant the requested relief where the responding party has failed to comply;
- (3) Permit oral argument, but only by the complying party;
- (4) Grant such other relief or impose such other sanctions as it shall deem proper.

39-211.9 With the approval of the Court, oral argument may be dispensed with by agreement of the parties and the matter shall be submitted to the Court on briefs filed.

39-211.10 Cases shall be continued or stricken from the argument list only pursuant to order of Court. A party may request such an order of Court by petition setting forth the basis for the request. Such petition must include certification regarding concurrence or non-concurrence of all other parties as required by Local Rule 39-206.1.

Local Rule 205.1(a). Filing Legal Papers. Presentation to the Court.

A legal paper requiring the signature of, or action by a Judge may be filed, delivered or mailed to the Prothonotary as in Pa.R.C.P. 205.1. When such paper is received by the Prothonotary it shall be marked filed and then delivered to the Court Administrator for distribution to the appropriate Judge's Law Clerk for judicial consideration.

Local Rule 205.2(a). Assignment to Judge upon Filing of Complaint.

Upon the filing of a complaint, the Prothonotary shall assign the case to a specific judge and shall indicate the name of the particular judge assigned in the caption. The name of the judge to whom the case is assigned shall be noted in the caption of each service copy of the complaint.

(i) All pleadings and papers filed subsequent to the complaint shall have the name of the judge to whom the case is assigned noted in the caption.

(ii) Subsequent to the filing of a complaint, motions and petitions shall be directed to the assigned judge for disposition unless such judge is unavailable.

Local Rule 206.1(a). Purpose and Designation.

The procedure after issuance of rules to show cause shall be as set forth in Pa.R.C.P. 206.7. If argument is ordered by the Court, the case shall be listed, briefed and decided as set forth in the Court's order. All applications for which the procedure for the relief sought is not otherwise specifically addressed elsewhere in the rules and which require the assertion of facts not of record are hereby designated as petitions. A petition, generally speaking, is a request for relief ancillary to a given cause of action. Each petition shall be accompanied by a verification or affidavit verifying the facts stated in the petition. Every petition shall contain a certification noting whether it is contested or uncontested or, if the petitioning party is unable to so indicate, a description of the efforts which have been made to determine the position of the responding party. References to phone calls and emails shall include date and time.

Local Rule 206.4(c). Petition with Issuance of Rule to Show Cause.

(1) Rules to show cause shall be issued at the discretion of the Court pursuant to the procedure set forth in Pa.R.C.P. 206.5. The petition for the rule to show cause may be filed, delivered or mailed to the Prothonotary as set forth in Pa.R.C.P. 205.1. Upon receipt, the Prothonotary shall mark it filed and deliver it to the Court Administrator. In the alternative, a petition for a rule to show cause may be presented to the court at any open session, or to the assigned judge's law clerk or to the assigned judge in chambers at such time as the court may set.

(2) The procedure after issuance of the rule to show cause shall be as set forth in Pa.R.C.P. 206.7. If hearing

or argument is ordered by the court the case shall be listed, briefed and decided as set forth in Local Rule 211 et seq.

(3) The Rule to Show Cause shall be substantially in the following form:

RULE TO SHOW CAUSE

AND NOW, this ___ day of _____, 20___, upon consideration of the foregoing petition, it is hereby ordered that

1. A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;

2. The respondent shall file a verified Answer to the Petition within ___ days of service upon the respondent;

3. The Petition shall be decided under Pa.R.C.P. No. 206.7;

4. Depositions shall be completed within _____ days of service upon petitioner of the Answer;

5. Hearing and/or argument, if any, shall be held on _____, _____, 20___, at ___ o'clock ___ .m. in the assigned Courtroom of the Franklin/Fulton County Courthouse, Chambersburg/McConnellsburg, PA;

6. If Items 4 and 5 above are left blank, depositions and/or argument or hearing will be considered upon the request of any party; and

7. Notice of entry of this order shall be provided to all parties by the petitioner.

8. In the case of Preliminary Objections [Local Rule 1028(a)], Motions for Judgment on the Pleadings [Local Rule 1034(a)] and Motions for Summary Judgment [Local Rule 1035(a)], parties shall follow the procedures for disposition set forth in those rules.

By the Court,

Committee Comment:

No applications are designated as "petitions" other than applications to open a default judgment or a judgment of non pros as required by Pa.R.C.P. 206.1(a)(1). The issuance of a rule to show cause shall be discretionary with the court as provided in Pa.R.C.P. 206.5. A petitioner seeking the issuance of a rule to show cause shall attach to the petition a Rule in the form designated by this rule and a proposed order granting the relief sought. Under Pa.R.C.P. 206.7, the issue raised in the petition may be decided without the necessity of argument. However, if the court orders argument on the petition, the matter shall be listed for argument, briefed and decided pursuant to Local Rule 211, et seq.

Local Rule 208.2. Motions.

Local Rule 208.2(c). A motion shall include a brief statement of the applicable authority, including reference to any applicable local or state rule or statute; or shall be accompanied by a brief at the time of filing.

Local Rule 208.2(d). Every motion shall contain a certification noting whether it is contested or uncontested or, if the moving party is unable to so indicate, a description of the efforts which have been made to determine the position of the responding party. References to phone calls shall include date and time.

Local Rule 208.2(e). Every motion relating to discovery shall attach a certificate, signed by counsel for the moving party, certifying that counsel has conferred or attempted to confer with all interested parties in order to resolve the matter without court action. The attached

certificate shall detail the efforts made by the moving party, detailing time, place and manner of conversations and shall include copies of any related correspondence.

Local Rule 208.3(a)(i). A motion or answer may be filed, delivered or mailed to the Prothonotary as set forth in Pa.R.C.P. 205.1. Upon receipt, the Prothonotary shall mark it filed and deliver it to the Court Administrator. Alternatively, a motion may be presented to the court at any open session, or to the assigned judge's law clerk or to the assigned judge in chambers at such time as the court may set.

(ii) Emergency motions in cases already assigned to a specific judge should be filed and then delivered directly to Court Administration or to the assigned judge's chambers for handling and, in cases not already assigned, should be directed to the Court Administrator for assignment.

(iii) Unless permitted by the court to be made or taken orally, all motions shall be in writing and shall be verified if the facts do not appear on the face of the record.

(iv) The proper order to be made by the court upon a motion shall be prepared by counsel and attached to the motion at the time of filing. Any order signed by the court shall be promptly filed.

(v) All motions other than those made at trial shall be served, along with any order entered or any order proposed to be entered, upon all other parties in accordance with Pa.R.C.P. 440(a). All such service shall be evidenced by either a certificate of service attached at the time of filing or by an affidavit of service filed separately.

(vi) Motions may be decided with out without oral argument. For those Motions for which a party requests argument of for which the Court requires argument, the Court may issue an order scheduling argument or the motion may be argued by following the procedure set forth in Local Rule 211 et seq.

Local Rule 208.3. Answers to Motions.

Local Rule 208.3(b). Except for those Motions which are uncontested by their terms, each responding party shall

file an Answer which shall contain supporting authority for the relief sought or which shall be accompanied by a brief at the time of filing. Each Answer shall also have attached at the time of filing the order which is sought by the answering party. Answers other than those to Motions for Summary Judgment shall be filed not later than 20 days after the date of service of the Motion as evidenced by a certificate or affidavit of service unless the time for filing is modified by court order; or unless earlier required in the interests of justice; or as soon as possible in the case of emergency motions.

[Pa.B. Doc. No. 10-1924. Filed for public inspection October 8, 2010, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Hearing

A Petition for Reinstatement to the active practice of law has been filed by Brian P. Raney and will be the subject of a hearing on November 16, 2010, before a hearing committee designated by the Board. Anyone wishing to be heard in reference to this matter should contact the District I Office of the Disciplinary Board of the Supreme Court of Pennsylvania, 16th Floor, Seven Penn Center, 1635 Market Street, Philadelphia, PA 19103, (215) 560-6296, on or before November 5, 2010. In accordance with Board Rule § 89.274(b), since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 10-1925. Filed for public inspection October 8, 2010, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 92a]

National Pollutant Discharge Elimination System (NPDES) Permitting, Monitoring and Compliance

The Environmental Quality Board (Board) rescinds Chapter 92 and replaces it by adding Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). This final-form rulemaking describes the process the Department of Environmental Protection (Department) will follow in issuing National Pollutant Discharge Elimination System (NPDES) permits for point source discharges of wastewater and stormwater to conform to the requirements of the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1387) and The Clean Streams Law (35 P.S. §§ 691.1—691.1001). This final-form rulemaking represents an extensive reorganization of existing Chapter 92 so that it follows the organization of the corresponding Federal regulations in 40 CFR Part 122 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System). The final-form rulemaking also sets forth a new NPDES fee structure designed to cover the Commonwealth's share of administering the NPDES program. In addition, several new provisions incorporating recent requirements established under the Federal program have been added and treatment requirements based on the secondary treatment standard for discharges of treated sewage have been established.

The order was adopted by the Board at its meeting of July 13, 2010.

A. Effective Date

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

B. Contact Persons

For further information, contact Ronald Furlan, Environmental Program Manager, Division of Planning and Permits, P. O. Box 8774, Rachel Carson State Office Building, Harrisburg, PA 17105-8774, (717) 787-8184; or William S. Cumings, Jr., Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, wcumings@state.pa.us. 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's web site at www.depweb.state.pa.us.

C. Statutory Authority

This final-form rulemaking is adopted under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P.S. §§ 691.5(b)(1) and 691.402), which provide for the adoption of regulations necessary for the implementation of The Clean Streams Law, and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to promulgate rules and regulations necessary for the proper performance of the work of the Department.

D. Background and Purpose

Chapter 92 set forth requirements regarding the issuance of NPDES permits for point source discharges of treated wastewater and stormwater in accordance with the Federal Clean Water Act. The regulations did not follow the organization of the comparable Federal regulations in 40 CFR Part 122. The primary purpose of this final-form rulemaking is to reorganize and replace existing Chapter 92 with new Chapter 92a, which is organized in a manner more consistent with the organization of 40 CFR Part 122.

The final-form rulemaking includes provisions intended to update the Commonwealth's NPDES Program to be consistent with changes at the Federal level since Chapter 92 was amended in 1999. Treatment requirements based on the secondary treatment standard for discharges of treated sewage have been established and a new NPDES permit fee structure is adopted.

The proposed rulemaking was adopted by the Board at its November 17, 2009, meeting. The proposed rulemaking was published at 40 Pa.B. 847 (February 13, 2010). There was 30-day public comment period, which concluded on March 15, 2010. The Board received public comments on the proposed rulemaking from 42 commentators, including the Independent Regulatory Review Commission (IRRC). The comments received on the proposed rulemaking are summarized in Section E and are more extensively addressed in a Comment and Response Document which is available from the Department.

The Board considered all of the public comments received. The Department briefed the Agricultural Advisory Board at its April 21, 2010, meeting that the revisions did not affect the agricultural community. The Water Resources Advisory Committee (WRAC) was briefed on the proposed revisions at its April 14, 2010, meeting, and considered the revisions at its May 11, 2010, meeting. The WRAC approved the final-form rulemaking with several additional comments. Additional revisions were made to the final-form rulemaking in response to those comments. The WRAC has provided minutes of its meetings to document its consideration and approval of the final-form rulemaking.

E. Summary of Changes to Proposed Rulemaking

§ 92a.2. Definitions

The following definitions in the proposed rulemaking were deleted in the final-form rulemaking: "expanding facility or activity," "immediate" and "permit-by-rule."

The definition of "BMP—Best Management Practices" has been revised by deleting proposed subparagraphs (iii) and (iv), which included measures designed to reduce erosion and runoff of soil and Best Management Practices (BMP) measures developed under 25 Pa. Code (relating to environmental protection) to reduce pollutant loading to surface waters, and replacing them with new paragraph (iii), which provides that the term "includes activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during, and after earth disturbance activities." The new definition of

“BMP—Best Management Practices” therefore focuses on practices relating to management of point sources of pollution.

The definition of “minor amendment” was revised to provide that it includes an amendment to an NPDES permit to “allow for a change in ownership or operational control of a facility.”

The definition of “municipal separate storm sewer system” was transferred intact to the definition of “MS4—Municipal separate storm sewer system.”

The definition of “small municipal separate storm sewer system” was revised by deleting a cross-reference to two paragraphs of the Federal definition of the same term.

The definition of “stormwater discharge associated with construction activity” was revised consistent with a recent revision to this definition in Chapter 102 (relating to erosion and sediment control). This revised definition eliminates a distinction between earth disturbances between 1 and 5 acres, and earth disturbances over 5 acres. Essentially, potential discharge associated with an earth disturbance of 1 acre or more will meet the definition of a “stormwater discharge associated with construction activity.”

The definition of “stormwater discharge associated with industrial activity” was revised by specifying the subparagraphs of the Federal definition in 40 CFR 122.26(b)(14) (relating to storm water discharges (applicable to State NPDES programs, see § 123.25)) which are applicable. Subparagraph (x) of the Federal definition which relates to construction activities was not incorporated into the definition.

The proposed definition of “TMDL—Total Maximum Daily Load” was replaced with a cross-reference to the definition of the same term in Chapter 96 (relating to water quality standards implementation).

§ 92a.3. Incorporation of Federal regulations by reference

The existing regulation regarding incorporation of Federal regulations by reference, § 92.2, provided that appendices, future amendments and supplements thereto are incorporated by reference. That will remain the case. However, to ensure consistency with other regulations promulgated by the Board incorporating Federal requirements, many of which do not specifically provide for the incorporation of future amendments to the Federal regulations, the references to future amendments are being deleted in subsections (a) and (c) of the final-form rulemaking. The Board emphasizes that this does not mean future amendments to the listed regulations are not incorporated by reference—they are.

In addition, the language in subsections (a) and (c) regarding the applicability of a State or Federal requirement in the event of a conflict between those requirements was slightly revised to make it clear that it would apply to one or more conflicts, not just more than one. The Federal regulations in 40 CFR 132 (relating to water quality guidance for the Great Lakes System) have been incorporated by reference in new subsection (b)(7).

§ 92a.12. Treatment requirements

Subsection (d) provides that a permittee of an affected facility, upon notice from the Department, is to take certain steps when there are new or changed water quality standards. These include steps necessary to plan, obtain a permit or other approval and construct facilities necessary to comply with the new water quality standards or treatment requirements. The proposed rule-

making has been amended in this final-form rulemaking by adding language requiring a permittee to undertake any other actions which may be necessary to comply with the requirements. The Board therefore clarifies that actions other than constructing new facilities may be appropriate.

Subsection (e) provides that a permittee is to submit either a report establishing that it is capable of meeting the new water quality standards or treatment requirements or a schedule of steps to comply with the new standards or requirements. Language has been added providing that the permittee is to provide information regarding “other actions that are necessary” to comply with the new standards or requirements when applicable.

§ 92a.21. Application for a permit

Subsection (a) of the proposed rulemaking provided that specified subsections of 40 CFR 122.21 (relating to application for a permit (applicable to State programs, see § 123.25)) are to be incorporated by reference, “except as required by the Department.” The quoted phrase has been deleted from the final-form rulemaking because it was susceptible to misinterpretation, as indicated in the comments received regarding the proposed rulemaking.

Subsection (b) requires that persons desiring to discharge pollutants file applications for an individual permit. Under the proposed rulemaking, persons proposing to discharge from a single residence sewage treatment plants (SRSTP) or through the application of pesticides would have been covered by a permit-by-rule and, accordingly, would not have been required to file an application. The authorization for the permits-by-rule have been deleted. Accordingly, the references to the permits-by-rule have been deleted from the final-form rulemaking.

§ 92a.23. NOI for coverage under an NPDES general permit

Under the existing regulation, dischargers who wish to be covered under a general permit are required to submit a Notice of Intent (NOI) to be covered under the general permit. This is so regardless of whether the coverage granted is based on an initial NOI or an NOI for a reissued general permit. Subsection (c) of the final-form rulemaking provides that a discharge may also be authorized under a general permit without the submission of an NOI for coverage or with a requirement that an NOI be submitted for initial coverage, but not for reissuance of coverage. This is intended to address those situations which may have been covered under a permit-by-rule. This change is consistent with 40 CFR 122.28(b)(2)(v) (relating to general permits (applicable to State NPDES programs, see § 123.25)) which provides that states and the United States Environmental Protection Agency (EPA) are authorized to allow persons to discharge under a general permit without submitting an NOI when the permitting authority finds that an NOI requirement would be inappropriate and provided that the discharge is not from a publicly-owned treatment works (POTW), combined sewer overflow (CSO), municipal separate storm sewer system (MS4), primary industrial facility or a stormwater discharge associated with a construction activity.

Under the existing regulation, the NOI must, among other things, demonstrate that the discharge from the point source, individually or cumulatively, will not result in a violation of an applicable water quality standard established under Chapter 93 (relating to water quality standards). The phrase in subsection (a) stating “result

in” a violation has been replaced with “cause or contribute to” a violation to ensure consistency with comparable Federal language.

Subsection (c) outlines the factors which the Department will consider in determining whether an NOI shall be submitted for coverage under a general permit. The factors include the type of discharge, the potential for toxic and conventional pollutant in the discharge and the estimated number of discharges to be covered. Another factor, the cumulative impact of the discharges, has been added in this final-form rulemaking.

Proposed § 92a.24. Permit-by-rule for SRSTPs

Proposed § 92a.25. Permit-by-rule for application of pesticides

The proposed rulemaking would have established criteria and requirements for coverage of discharges from SRSTPs and the application of pesticides under a permit-by-rule. The proposed provisions regarding the permits-by-rule have been deleted in the final-form rulemaking. Because of the deletions, the remaining sections of Subchapter B (relating to permit application and special NPDES program requirements) have been renumbered.

§ 92a.24. New or increased discharges, or change of waste streams

Proposed § 92.26(a) would have authorized certain activities which result in increases in the discharge of certain permitted pollutants which do not have the potential to exceed effluent limitations without prior approval of the Department. A change in the pollution profile of the effluent that may exceed effluent limitations or require new effluent limitations would have required prior approval of the Department.

This subsection was amended to delete the authorization for increases in the discharge of pollutants without prior notification to the Department. This authorization was deleted because it appeared to limit normal and usual variation in wastestreams, and normal increases in the pollutant load already provided for in the permit. The notification requirement has been amended to state that in addition to facility expansions or process modifications stated in the proposed rulemaking, production increases and a change in wastestream that may result in an increase of pollutants that may have the potential to exceed effluent limitations guidelines or violate effluent limitations or require new effluent limitations require prior approval from the Department. The approval will be approved in writing before the permittee may begin the new or increased discharge or change in wastestream. The Board therefore clarifies that only changes that may exceed permit conditions or previous representations on permit applications need the prior approval of the Department.

Subsection (b), which relates to stormwater discharges associated with construction activity, has been clarified to make it clear that the Department will determine if a permittee will be required to submit a permit application for a new or expanded disturbance area not identified in the permit before the permittee may initiate construction activity in the new or expanded disturbed area.

§ 92a.26. Application fees

Proposed § 92a.28, final-form § 92a.26, set forth proposed permit application fees. The fees remain unchanged in this final-form rulemaking. An editorial change has been made to subsection (a) specifying that fees collected are to be deposited into the Clean Water Fund account. Minor editorial changes have also been made that move

the provision for the fee for mining activities from subsection (d) to subsection (c). Since a discharge from a mining activity is an industrial waste discharge, it most properly belongs in subsection (c) and is subject to applicable industrial waste requirements.

Subsection (g) sets a maximum fee of \$2,500 for an NOI for coverage under a general permit. This subsection has been amended to include a provision that the maximum will not be applicable to the fees established in Chapter 102.

Subsection (i) has been added providing that a Federal or State agency which provides funding to the Department for implementation of the NPDES program may be exempt from the requirement to pay permit application fees. This would only apply when the Federal or State agency provides significant funding or staff to assist the Department in the administration of the NPDES program.

§ 92a.27. Sewage discharges

Proposed § 92a.29(a), final-form § 92a.27(a), outlined additional application requirements applicable to new and existing sewage dischargers. It also contained an exception from these requirements “. . . where aquatic communities are essentially excluded as documented by water quality data confirming the absence of the communities and confirming the lack of a trend of water quality improvement in the waterbody, and provided that the Department has determined that the primary cause of the exclusion is unrelated to any permitted discharge.” The quoted language has been deleted from the final-form rulemaking.

§ 92a.32. Stormwater discharges

This section outlines application requirements for different types of stormwater discharges. Subsection (e) has been added to address application requirements for stormwater discharges associated with industrial activity.

§ 92a.34. Cooling water intake structures

Proposed § 92a.36, final-form § 92a.34, provided that the requirements applicable to cooling water intake structures (CWIS) for new facilities under section 316(b) of the Federal Clean Water Act (33 U.S.C.A. § 1326(b)) in 40 CFR 125.80—125.89 would be incorporated by reference. Subsection (c) of the proposed rulemaking further provided that “[t]he Department will determine if a facility with a cooling water intake structure reflects the BTA for minimizing adverse environmental impacts based on a site specific evaluation.” Subsection (c) has been deleted in the final-form rulemaking.

§ 92a.36. Department action on NPDES permit applications

Proposed § 92a.38(b) provided for Department consideration of Local and County Comprehensive Plans and zoning ordinances in the review of permit applications. A new specific requirement would not have been applicable to applicants, as this is the current policy of the Department. This subsection has been deleted in the final-form rulemaking and the requirement will continue to be implemented through policy.

§ 92a.41. Conditions applicable to all permits

This section generally incorporates permit conditions applicable to NPDES permits as set forth in 40 CFR 122.41(a)—(m) (relating to conditions applicable to all permits (applicable to State programs, see § 123.25)). Subsection (b) of the proposed rulemaking provided that “[t]he immediate notification requirements of § 91.33

(relating to incidents causing or threatening pollution) supersede the reporting requirements of 40 CFR 122.41(l)(6).” The quoted language has been deleted and the subsection has been revised to provide that the permittee shall provide oral notification to the Department “as soon as possible but no later than 4 hours after the permittee becomes aware of the incident causing or threatening pollution” and provide a written submission within 5 days of becoming aware of the incident.

Subsection (c) of the proposed rulemaking would have provided that a “discharger may not discharge floating materials, oil, grease, scum, sheen and substances that produce color, taste, odors, turbidity or settle to form deposits.” This subsection has been revised to account for the difference in the characteristics of the listed materials and their interactions with receiving waters. Subsection (c) now provides that “[t]he discharger may not discharge floating materials, scum, sheen or substances that result in deposits in the receiving water. Except as provided for in the permit, the discharger may not discharge foam, oil, grease, or substances that produce an observable change in the color, taste, odor, or turbidity of the receiving water.”

§ 92a.47. Sewage permit

This section outlines requirements for sewage permits involving discharges of treated sewage. Sewage discharges must meet certain requirements, but some requirements apply only to POTW facilities, and certain exemptions and adjustments are provided for in this section. The requirement relating to weekly average discharge limitations for Biochemical Oxygen Demand BOD₅ and total suspended solids (TSS) in subsection (a)(2) has been revised to apply only to POTW facilities. The requirement for tertiary treatment in certain water quality-limited scenarios in the former subsection (b) has been deleted and the remainder of the section renumbered. Several new subsections have been added: subsection (f) provides that POTW facilities that have relaxed limits for BOD₅ and TSS may retain those limits until a new or amended water quality management permit authorizing an increase in the design flow of the facility is issued; subsection (g) provides that POTW facilities with CSOs that cannot meet the removal efficiency requirements of subsection (a)(3) for BOD₅ and TSS during wet weather may be held to a less stringent standard; subsection (h) provides that POTW facilities with CSOs that cannot meet the removal efficiency requirements of subsection (a)(3) for BOD₅ and TSS during dry weather may be held to a less stringent standard as long as certain conditions apply; and subsection (i) provides that POTW facilities that cannot meet the removal efficiency requirements of subsection (a)(3) for BOD₅ and TSS in separate sewers due to less concentrated influent may be held to a less stringent standard as long as certain conditions apply. These new subsections largely mirror exemptions and adjustments provided for in 40 CFR 133.103 (relating to special considerations).

Section 92a.47(a) describes secondary treatment. Subsection (a)(7) of the proposed regulation provided that one of the accomplishments of secondary treatment is treatment which complies with the requirements of § 95.2(1)—(3) relating to industrial waste and oil-bearing wastewaters. Subsequent to the adoption of this final-form rulemaking a notice was published in the *Pennsylvania Bulletin* at 40 Pa.B. (August 21, 2010) of amendments to Chapter 95, including an amendment to § 95.2. The amendment to § 95.2 deleted a reference to paragraph (1) and renumbered paragraphs (2) and (3) as paragraphs (1) and (2). Section 92a.47(a)(7) has been revised accordingly.

§ 92a.48. Industrial waste permit

This section outlines requirements for industrial water permits, incorporating much of former § 92.2d. Proposed subsection (a)(4) would have required that industrial discharges of conventional pollutants be assigned technology-based limits of no greater than 50 mg/L of CBOD₅ and 60 mg/L of TSS. This provision has been deleted in the final-form rulemaking.

§ 92a.50. CAAP

Subsection (a) of the proposed rulemaking would have provided that the antidegradation requirements of § 93.4c would apply to discharges from a concentrated aquatic animal production (CAAP) into a surface water classified as a High Quality Water or an Exceptional Value Water. This could give the impression that § 93.4c applied only to special protection waters when they actually apply to discharges to all surface waters. To avoid confusion, the language in proposed subsection (a) has been deleted in the final-form rulemaking.

Subsection (d) of the proposed rulemaking, renumbered subsection (c) in the final-form rulemaking, would have authorized the limited use of products or chemicals that contain carcinogenic ingredients which would otherwise be prohibited provided certain conditions are met. Among the conditions outlined in the proposed rulemaking was that the permittee “[d]emonstrate through sampling or calculation that any carcinogen in the proposed chemical will not be detectable in the final effluent, using the most sensitive analytic method available.” The phrase “most sensitive analytic method available” has been revised to provide for the use of an “EPA-approved analytic method for wastewater analysis with the lowest published detection limit” to eliminate guesswork as to what constitutes an appropriate analytic method.

§ 92a.51. Schedules of compliance

Subsection (a) of the proposed rulemaking would have provided, in part, that a schedule of compliance is to require compliance with final enforceable effluent limitations as soon as practicable, but in no case longer than 3 years, unless the Environmental Hearing Board (EHB) or a court of competent jurisdiction issues an order for a longer time of compliance. The 3-year limitation has been changed to 5 years in the final-form rulemaking. In addition, the reference to the EHB has been deleted. Schedules of compliance may only be extended by a court of competent jurisdiction, as under former § 92.55.

Subsection (b) provides that when the period of time for compliance exceeds 1 year, a schedule would be set forth in the permit specifying interim requirements and the dates for their achievement. A sentence has been added to the final-form rulemaking providing that the time between interim requirements may not exceed 1 year.

§ 92a.54. General permits

Subsection (a)(7) of the proposed rulemaking (as well as former § 92.81(a)(7)) provided that a general NPDES permit may be issued if discharges from point sources, among other things, “[i]ndividually and cumulatively do not have the potential to cause significant adverse environmental impact.” This subsection has been clarified in the final-form rulemaking to address violations of water quality standards also. Accordingly, a general permit may be issued where point source discharges “[i]ndividually and cumulatively do not have the potential to cause or contribute to a violation of an applicable water quality standard established under Chapter 93 . . . or cause significant adverse environmental impact.”

Subsection (c) of the proposed rulemaking (as well as § 92.81(c)) outlined two ways a permittee would be authorized to discharge under the general permit: (1) following a waiting period specified in the general permit; or (2) upon receipt of notification of approval for coverage under the general permit from the Department. The final-form rulemaking authorizes a third way of authorizing a discharge: immediately upon submission of the NOI. The manner in which a discharge may be authorized will be specified in the general permit.

§ 92a.61. *Monitoring*

The monitoring provisions in the proposed rulemaking are retained except for some minor clarifications. Subsection (b) of the proposed rulemaking provided that the Department may impose reasonable monitoring requirements, including monitoring of the intake and discharge flow of a facility or activity. This subsection has been slightly revised to make it clear that the provision addresses surface water intake and discharge waters, and that monitoring would not be limited to monitoring of the flow parameter.

Subsection (d) of the proposed rulemaking provided, in relevant part, that a discharge authorized by an NPDES permit that is “not a minor discharge” shall be monitored by the permittee for certain named parameters. This section was revised to make it clear that the discharge authorized by the NPDES permit is that issued to a facility which is not a minor facility rather than for a minor discharge.

§ 92a.62. *Annual fees*

The annual fees established in this section remain unchanged from those in the proposed rulemaking. Subsection (a) has been revised to make it clear that these fees are to be paid to the Clean Water Fund and that the categories of fees are based on annual average design flows. In addition, subsection (b) has been revised to make it clear that the annual fees are for discharges of treated sewage, not domestic sewage as was inadvertently stated in the proposed rulemaking.

As with permit fees established under § 92a.26 (relating to application fees), a Federal or State agency that provides funding to the Department for the implementation of the NPDES program may be exempt from the payment of annual fees.

§ 92a.75. *Reissuance of expiring permits*

Subsection (b) of the proposed rulemaking would have authorized the administrative extension of a permit for a minor facility for a maximum of 5 years provided certain conditions were met; namely the permittee is in compliance with applicable requirements and no changes in Department regulations have occurred since the permit was issued which would affect the effluent limitations. This subsection has been deleted in the final-form rulemaking because it was found to be confusing and subject to misinterpretation.

§ 92a.84. *Public notice of general permits*

Subsection (c) of the proposed rulemaking (and former § 92.83(a)(3)) outlined mechanisms for approvals for coverage under a general permit. The mechanisms were either a notice published in the *Pennsylvania Bulletin* of each NOI under an applicable general NPDES permit and of each approval of coverage or notice will be published in the *Pennsylvania Bulletin* of each approval of coverage only. The final-form rulemaking authorizes a third mechanism; a NOI would not be required for coverage under a general permit. This is consistent with the requirements

of 40 CFR 122.28(b)(2)(v) which authorizes discharges under a general permit without submitting an NOI under specified conditions.

§ 92a.85. *Notice to other government agencies*

Subsection (a) was added to incorporate by reference 40 CFR 124.59 (relating to conditions requested by the Corps of Engineers and other government agencies).

§ 92a.87. *Notice of reissuance of permits*

The proposed rulemaking would have established a public notice process for administrative extensions of permits. This portion of the proposed rulemaking has been deleted since the provisions regarding administrative extensions in proposed § 92a.75(b) (relating to reissuance of expiring permits) were deleted in the final-form rulemaking.

F. *Summary of Comments and Responses Regarding the Proposed Rulemaking*

The Board approved the proposed rulemaking with a 30-day comment period on November 17, 2009. A notice of proposed rulemaking was published at 40 Pa.B. 847 (February 13, 2010). Public comments were accepted from February 13, 2010, until March 15, 2010. The Department received comments from 42 commentators during the public comment period.

Detailed responses to the comments received are in the Comment and Response document. The major changes to the proposed rulemaking in response to comments received are summarized as follows:

- *Definitions.* A number of definitions were revised as suggested by commentators. In addition, the definition of “BMP—Best Management Practices” was revised to better align the definition with the definition of BMP in other chapters.

- *Fees.* A provision was added that requires that fees collected be deposited to the Clean Water Fund. In addition:

- The fee for “mining activity” was relocated within the fee tables to the section covering discharges of industrial wastewater.

- An exception to the \$2,500 maximum fee for coverage under a general permit was added for a general permit provided for in Chapter 102. Certain fees for general permits in Chapter 102 will be based on the amount of disturbed area rather than a set fee.

- A provision was added allowing for the waiver of permit fees for any Federal or State agency or commission that provides funding or staffing to the Department for implementation of the NPDES program.

- *Treatment requirements.* Certain treatment requirements that had been proposed were deleted from the final-form rulemaking. Specifically, the requirement for tertiary treatment as a minimum treatment requirement for discharges of treated sewage in certain water quality-limited situations was deleted. Minimum treatment requirements for conventional pollutants in industrial waste discharges were deleted. The incorporation of the secondary treatment standard for discharges of treated sewage was retained, but certain adjustments and exemptions from the requirements of the secondary treatment standard that are provided for in Federal regulations were reinstated in part.

- *Permit-by-rule.* Provisions designed to provide for permit-by-rule coverage for application of pesticides, and

also for certain small discharges of treated sewage, were deleted. These discharges will instead be covered under general permits.

- *New or increased discharges, or change of wastestream.* This section is designed to assure that permittees inform the Department of important changes to their facility or wastestream and, if necessary, file for an amended or reissued permit. This section was revised to make it clear that only changes that could violate permit conditions, or that exceed previous representations on permit applications, need be reported.

- *Department action on permit applications.* A subsection that provided that the Department will consider local and county plans and zoning when making permitting decisions was deleted. The Department will still consider plans and ordinances under the existing guidance (DEP-ID: 012-022-001, *Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Authorizations for Facilities and Infrastructure*).

- *Conditions applicable to all permits.* A provision designed to control certain conditions (floating materials, oil, grease, scum, sheen and substances that produce color, taste, odors, turbidity or settle to form deposits) has been revised to make it clear that many of these conditions are acceptable to the extent that they are provided for in the permit. Even if not provided for in the permit, they are all acceptable to the extent that they do not result in an observable effect on the condition of the receiving water. In addition, certain oral and written reporting requirements relating to incidents causing or threatening pollution were clarified based on comments received.

- *Administrative extensions of permits.* New proposed language that applied to administrative extensions of permits was deleted so that there will not be new provisions regarding administrative extensions. Some commentators felt the new provision was confusing and subject to misinterpretation and the Department agreed.

Comments were received that did not result in revisions to the final-form rulemaking are summarized as follows:

- *Fees.* Many commentators noted that the proposed permit fee structure is excessive, unjustified or otherwise poorly conceived. While the concern of the regulated community is understandable, these fees are required as part of a fundamental shift to a self-sustaining program. They are reasonable and compare favorably with fees assessed by neighboring and other states.

- *Sanitary sewer overflows.* Some commentators argued that these conditions, involving the overflow of raw, untreated or partially treated sewage into rivers and streams, should be allowable under some conditions. However, a sanitary sewer overflow is an inherently unacceptable condition and an immediate threat to public health.

- *Fecal coliform limits.* Some commentators argued against a maximum level of fecal coliforms in effluent. However, as a measure of effective disinfection of treated sewage, fecal coliforms must be controlled on an ongoing basis.

- *Confidentiality of information.* Some commentators suggested revisions to these provisions based on certain interpretations of applicable Federal or Commonwealth requirements. The existing provisions were determined to achieve a proper balance of the competing Federal and Commonwealth requirements.

- *Pollution prevention.* Two commentators took issue with the pollution prevention provisions in the proposed rulemaking, but these provisions represent established Department policy. The Department is committed to integrate pollution prevention into its everyday practices and to encourage and assist permittees in implementing pollution prevention practices whenever possible.

- *Applicability of Chapter 92a and other chapters containing NPDES requirements.* Some commentators believed that Chapter 92a does not or should not apply to their facilities or activities, which are point sources. Other commentators believed that requirements in other chapters that contain NPDES-based requirements do not have the full force of the NPDES regulation, Chapter 92a. The language in the regulations properly clarifies these issues and that clarification is both timely and appropriate.

- *New potable water supply (PWS) intakes.* Comments were received to the effect that a new PWS should not automatically be accommodated by adjusting upstream permit limits when necessary, but that adjustments should be limited to certain pollutants or be justifiable based on a cost-benefit analysis. However, PWS is a protected use of this Commonwealth's rivers and streams and shall be protected as required by statute and regulation.

- *CWIS.* Comments were received to the effect that the Department should not presume to require Best Technology Available (BTA) for CWIS before Federal regulations regarding CWIS are promulgated. The Department acknowledges the uncertainty, but it may not ignore its ongoing obligation to make BTA determinations.

- *Variations.* Several commentators suggested that the Board should automatically incorporate by reference new variations provided for in Federal regulation. The Department has always taken the position that new Federal variations will be reviewed for appropriateness in this Commonwealth and for compliance with The Clean Streams Law.

- *Public notice.* Two commentators felt that public notice at the site of a new or reissued permit is inappropriate and suggested a posting at the Department's offices, but posting at the site of the discharge is a fundamental component of public notice. Several commentators objected to the deletion of the requirement that the location of the first downstream PWS be included in public notice, but this provision has been deleted per Homeland Security requirements. The Department will still include this information in a public notice to the extent that it is allowable, but it is not appropriate to retain it as a regulatory requirement.

- *Procedure for civil penalty assessments.* Two commentators proposed a major reworking of the procedure for civil penalty assessments, specifically in relation to the process of a penalty assessment hearing that would apply. Hearings regarding civil penalty assessments are based on a well established, Department-wide process and the commentators did not advance a compelling rationale as to why it should be changed.

G. *Benefits, Costs and Compliance*

Benefits

Chapter 92a will help protect the environment, ensure the public's health and safety and promote the long-term sustainability of this Commonwealth's natural resources by ensuring that the water quality of rivers and streams is protected and enhanced. Chapter 92a implements the

Federal Clean Water Act and The Clean Streams Law for point source discharges of treated wastewater to the rivers and streams of this Commonwealth.

The revision primarily is designed to improve the effectiveness and efficiency of the NPDES permits program. The major problem with Chapter 92 was that it often used different language than the companion Federal regulations in 40 CFR Part 122 to describe requirements and it was often not clear if Chapter 92 requirements were more stringent than Federal requirements. The primary goal of the proposed rulemaking was to rebuild the regulations, starting with the Federal program requirements, incorporating additional or more stringent requirements only when there was clearly a basis for them. When feasible, Chapter 92a reverts to Federal terminology and definitions to minimize possible distortions or ambiguity. The Department expects that the reorganization of the NPDES regulation will have a substantive positive effect on the Commonwealth's NPDES program. Permittees and other members of the regulated community will find it easier to determine if the Commonwealth has additional requirements compared to Federal requirements. A supplemental benefit is that turnover in permit engineers and writers should be less disruptive since new staff should find it easier to understand the streamlined regulatory requirements.

The final-form rulemaking also includes new provisions designed to keep the program current with recent changes at the Federal level. Some of these provisions are needed to ensure continued Federal approval of the Commonwealth's NPDES program by the EPA.

Compliance costs

New requirements are not proposed in this final-form rulemaking that would require general increases in personnel complement, skills or certification. The new permit fees are the only broad-based new requirement that would increase costs for permittees, but the fees have been structured to assure that smaller facilities, that are more financially constrained and also have a lower potential environmental impact, are assessed the lowest fees. The new permit fees are relatively small on both a per gallon basis and a per customer basis, especially for larger facilities. The cost of securing and maintaining an NPDES permit to discharge treated wastewater to surface waters is small compared to the cost of operating these facilities. Moreover, these NPDES fees are very competitive with what is charged by other states. As an example, for a 1 million gallon per day sewage treatment plant, the annual fee will be \$1,250 per year (\$3.42 per day) in this Commonwealth. The annual fee for the same facility is \$5,250 in Ohio, \$7,500 in New York, \$15,000 in Illinois, between \$3,000 and \$5,500 in Michigan and between \$3,850 and \$4,350 in Virginia.

The final-form rulemaking addresses wastewater treatment facilities, including industrial wastewater treatment facilities, POTWs and other facilities that treat sanitary wastewater. The treatment requirements of the NPDES regulations affect operational costs to some extent, but the final-form rulemaking does not include new broad-based treatment requirements that would apply to most facilities. For most facilities, the compliance cost of the final-form rulemaking is limited to the revised application and annual fees. Current annual income from NPDES application fees is estimated at \$750,000, without annual fees, versus a cost of running the program estimated at \$5 million. The new fee structure is designed to return annual income of approximately \$5 million, so that the

total additional cost to the regulated community will be approximately \$4.25 million per year.

Compliance Assistance Plan

In cases when the receiving water is water quality-limited (impaired), wastewater treatment facilities may be required to upgrade their treatment capabilities. This would involve a significant compliance cost burden regarding engineering, construction and operating costs for upgrading the wastewater treatment facility. The Department's Technical and Financial Assistance Program in conjunction with the Pennsylvania Infrastructure Investment Authority offers financial assistance to eligible public water systems. This assistance is in the form of a low-interest loan, with some augmenting grant funds for hardship cases. Eligibility is based upon factors such as public health impact, compliance necessity and project/operational affordability. Other potential sources of financial assistance for wastewater treatment facility upgrades are as follows:

- The Water Supply and Wastewater Infrastructure Program (PennWorks) administered by the Department of Community and Economic Development (DCED).
- The Community Development and Block Grant Program administered by the DCED.
- The Growing Greener New or Innovative Water/Wastewater Technology Grant Program administered by the Department.

Paperwork requirements

Most public or commercial permittees will be required to submit annual fees to the Department.

New forms, reports or other paperwork are not required under this final-form rulemaking, except for certain new requirements for CAAP facilities. CAAPs are fish hatcheries or fish farms. Under this final-form rulemaking, CAAPs would be required to have a written BMP plan to manage feed and nutrients to minimize excess feed that wastes resources and causes pollution without any benefit. Also, therapeutic drug use (for example, fungicides, antibiotics) shall be tracked and reported. The implementation of a BMP plan to manage feed costs and impacts is widely recognized as an appropriate industry practice and well run facilities already have them in place. Other options that were considered, such as establishing strict mass and concentration-based requirements for discharges of pollutants from CAAPs, were rejected as unnecessary and potentially burdensome. Facilities already are required to secure approval for discharge of any therapeutic drug that may be detectable in the effluent. The Department generally considers the use of these therapeutic drugs as safe and of low environmental concern, but tracking use rates will support investigation of any potential environmental impact of the drugs, or allegation of same.

H. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that achieve or move beyond compliance.

This final-form rulemaking commits the Department to encouraging pollution prevention by providing assistance to the permittee and users of the permittee's facilities in the consideration of pollution prevention measures such as process changes, materials substitution, reduction in volume of water use, in-process recycling and reuse of water and general measures of "good housekeeping" within the plant or facility. Lower permit fees are assessed on facilities with lower average annual design flows, which effectively motivate dischargers to pursue point source discharge reductions by reducing the volume of wastewater that requires treatment. Section 92a.10 (relating to pollution prevention) incorporates the established hierarchy for pollution prevention in descending order of preference for environmental management of wastewater: (1) process change; (2) materials substitution; (3) reuse; (4) recycling; (5) treatment; and (6) disposal.

I. *Sunset Review*

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

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 27, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 847, to IRRC and to 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 August 18, 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 August 19, 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) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 847.

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

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapters 92 and 92a, are amending by deleting §§ 92.1, 92.2, 92.2a—92.2d, 92.3—92.5, 92.5a, 92.7, 92.8a, 92.9, 92.11, 92.13, 92.13a, 92.15, 92.17, 92.21, 92.21a, 92.22,

92.23, 92.25, 92.31, 92.41, 92.51, 92.52a, 92.53, 92.55, 92.57, 92.59, 92.61, 92.63, 92.65, 92.67, 92.71, 92.71a, 92.72a, 92.73, 92.75, 92.77—92.79, 92.81—92.83 and 92.91—92.94; by adding §§ 92a.1, 92a.4—92a.7, 92a.9—92a.11, 92a.22, 92a.42—92a.46, 92a.49, 92a.52, 92a.53, 92a.55, 92a.71—92a.74, 92a.76, 92a.81—92a.83, 92a.86, 92a.88, 92a.91—92a.94 and 92a.101—92a.104 to read as set forth at 40 Pa.B. 847; and by adding §§ 92a.2, 92a.3, 92a.8, 92a.12, 92a.21, 92a.23—92a.36, 92a.41, 92a.47, 92a.48, 92a.50, 92a.51, 92a.54, 92a.61, 92a.62, 92a.75, 92a.84, 92a.85 and 92a.87 to read as set forth in Annex A.

(b) The Chairperson of the Board shall submit this order, 40 Pa.B. 847 and Annex A to the Office of General Counsel and the Office of the 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, 40 Pa.B. 847 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, 40 Pa.B. 847 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. 5106 (September 4, 2010).)

Fiscal Note: Fiscal Note 7-443 remains valid for the final adoption of the subject regulations.

Annex A

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

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 92. (Reserved)

§ 92.1. (Reserved).

§ 92.2. (Reserved).

§§ 92.2a—92.2d. (Reserved).

§§ 92.3—92.5. (Reserved).

§ 92.5a. (Reserved).

§ 92.7. (Reserved).

§ 92.8a. (Reserved).

§ 92.9. (Reserved).

§ 92.11. (Reserved).

§ 92.13. (Reserved).

§ 92.13a. (Reserved).

§ 92.15. (Reserved).

§ 92.17. (Reserved).

§ 92.21. (Reserved).

§ 92.21a. (Reserved).

§ 92.22. (Reserved).

§ 92.23. (Reserved).

§ 92.25. (Reserved).

§ 92.31. (Reserved).

- § 92.41. (Reserved).
- § 92.51. (Reserved).
- § 92.52a. (Reserved).
- § 92.53. (Reserved).
- § 92.55. (Reserved).
- § 92.57. (Reserved).
- § 92.59. (Reserved).
- § 92.61. (Reserved).
- § 92.63. (Reserved).
- § 92.65. (Reserved).
- § 92.67. (Reserved).
- § 92.71. (Reserved).
- § 92.71a. (Reserved).
- § 92.72a. (Reserved).
- § 92.73. (Reserved).
- § 92.75. (Reserved).
- §§ 92.77—92.79. (Reserved).
- §§ 92.81—92.83. (Reserved).
- §§ 92.91—92.94. (Reserved).

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

Subchap.

- A. DEFINITIONS AND GENERAL PROGRAM REQUIREMENTS
- B. PERMIT APPLICATION AND SPECIAL NPDES PROGRAM REQUIREMENTS
- C. PERMITS AND PERMIT CONDITIONS
- D. MONITORING AND ANNUAL FEES
- E. TRANSFER, MODIFICATION, REVOCATION AND REISSUANCE, TERMINATION OF PERMITS, REISSUANCE OF EXPIRING PERMITS AND CESSATION OF DISCHARGE
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Subchapter A. DEFINITIONS AND GENERAL PROGRAM REQUIREMENTS

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§ 92a.2. Definitions.

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

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

Administrator—The Administrator of the EPA or an authorized representative.

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

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

Applicable effluent limitations or standards—State, interstate and Federal effluent limitations or standards to which a discharge is subject under the State and Federal Acts, including, but not limited to, water quality-based and technology-based effluent limitations, standards of performance, toxic effluent standards and prohibitions, BMPs and pretreatment standards.

Applicable water quality standards—Water quality standards to which a discharge is subject under the State and Federal Acts, and regulations promulgated thereunder.

Application—The Department’s form for applying for approval to discharge pollutants to surface waters of this Commonwealth under a new NPDES permit, or reissuance of an existing NPDES permit, or the modification or transfer of an existing NPDES permit.

Aquaculture project—A defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants and animals.

Authority—A body politic and corporate created under 53 Pa.C.S. Chapter 56 (relating to municipal authorities act).

BAT—Best Available Technology Economically Achievable—

(i) The maximum degree of effluent reduction attainable through the application of the best treatment technology economically achievable within an industrial category or subcategory, or other category of discharger.

(ii) The term includes categorical ELGs promulgated by the EPA under section 304(b) of the Federal Act (33 U.S.C.A. § 1314(b)).

BOD₅—Biochemical oxygen demand, 5-day—The 5-day measure of the pollutant parameter biochemical oxygen demand.

BMP—Best Management Practices—

(i) Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce pollutant loading to surface waters of this Commonwealth.

(ii) The term includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. The term includes activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during and after earth disturbance activities.

BTA—Best Technology Available—The combination of technologies and operational practices that achieves the most effective degree of impingement mortality and entrainment reduction applicable to the facility.

CAAP—Concentrated Aquatic Animal Production Facility—A hatchery, fish farm or other facility which meets the criteria in 40 CFR 122.24 (relating to concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25)).

CAFO—Concentrated Animal Feeding Operation—A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, or any agricultural operation defined as a large CAFO under 40 CFR 122.23(b)(4) (relating to concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25)).

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

CBOD₅—Carbonaceous biochemical oxygen demand, 5-day—The 5 day measure of the pollutant parameter carbonaceous biochemical oxygen demand.

CSO—Combined Sewer Overflow—An intermittent overflow or other untreated discharge from a municipal combined sewer system (including domestic, industrial and commercial wastewater and stormwater) prior to reaching the headworks of the sewage treatment facility which results from a flow in excess of the dry weather carrying capacity of the system.

Combined sewer system—A sewer system that has been designed to serve as both a sanitary sewer and a storm sewer.

Conventional pollutant—Biochemical oxygen demand, carbonaceous biochemical oxygen demand, suspended solids, pH, fecal coliform, oil or grease.

DMR—Discharge Monitoring Report—The Department or EPA supplied forms for reporting of self-monitoring results by the permittee.

Daily discharge—The discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably and accurately represents the calendar day for purposes of sampling:

(i) For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day.

(ii) For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

Discharge—An addition of any pollutant to surface waters of this Commonwealth from a point source.

Disturbed area—As defined in Chapter 102 (relating to erosion and sediment control).

Draft permit—A document prepared by the Department indicating the Department's tentative decision to issue or deny, modify, revoke or reissue a permit.

ELG—Effluent Limitations Guideline—A regulation published by the Administrator under section 304(b) of the Federal Act, or by the Department, to revise or adopt effluent limitations.

Earth disturbance activity—As defined in Chapter 102.

Effluent limitation or standard—A restriction established by the Department or the Administrator on quantities, rates and concentrations of chemical, physical, bio-

logical and other constituents which are discharged from point sources into surface waters, including BMPs and schedules of compliance.

Entrainment—The incorporation of all life stages of fish and shellfish with intake flow entering and passing through a cooling water intake structure and into a cooling water intake system.

Existing discharge—A discharge that is not a new discharge or a new source.

Facility or activity—Any NPDES point source or any other facility or activity including land or appurtenances thereto that is subject to regulation under the NPDES Program.

Federal Act—The Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1387) also known as the Clean Water Act or CWA.

GPD—Gallons per day.

Impingement—The entrapment of all life stages of fish and shellfish on the outer part of the intake structure or against a screening device during periods of intake water withdrawal.

Indirect discharger—A discharger of nondomestic wastewater introducing pollutants into a POTW or other treatment works.

Industrial waste—

(i) A liquid, gaseous, radioactive, solid or other substance, not sewage, resulting from manufacturing or industry, or from an establishment, and mine drainage, refuse, silt, coal mine solids, rock, debris, dirt and clay from coal mines, coal collieries, breakers or other coal processing operations.

(ii) The term includes all of these substances whether or not generally characterized as waste.

Instantaneous maximum effluent limitation—The highest allowable discharge of a concentration or mass of a substance at any one time as measured by a grab sample.

Intermittent stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water, which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.

Interstate agency—An agency of two or more states established by or under an agreement or compact, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

Large municipal separate storm sewer system—A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(4) (relating to storm water discharges (applicable to State NPDES programs, see § 123.25)).

Livestock—

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

(ii) The term does not include aquatic species.

MGD—Million gallons per day.

MS4—Municipal Separate Storm Sewer System—A separate storm sewer (including roads with drainage

systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains) which is all of the following:

(i) Owned or operated by a State, city, town, borough, county, district, association or other public body (created by or under State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Federal Act (33 U.S.C.A. § 1288) that discharges to surface waters of this Commonwealth.

(ii) Designed or used for collecting or conveying stormwater.

(iii) Not a combined sewer.

(iv) Not part of a POTW.

Major amendment—Any amendment to an NPDES permit that is not a minor amendment.

Major facility—A POTW with a design flow of 1.0 MGD or more and any other facility classified as such by the Department in conjunction with the Administrator.

Manure—

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

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

Medium municipal separate storm sewer system—A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(7).

Mining activity—A surface or underground mining activity as defined in Chapter 77 or Chapter 86 (relating to noncoal mining; and surface and underground coal mining: general).

Minor amendment—An amendment to an NPDES permit to correct a typographical error, increase monitoring requirements, change interim compliance dates by no more than 120 days, allow for a change in ownership or operational control of a facility, delete an outfall, change a construction schedule for a discharger that is a new source, or to incorporate an approved pretreatment program into an existing permit.

Minor facility—A facility not identified as a major facility.

Monthly average discharge limitation—The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during the calendar month divided by the number of daily discharges measured during the month.

Municipality—A city, town, borough, county, township, school district, institution, authority or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes or other wastes.

NOI—Notice of Intent—A complete form submitted for NPDES general permit coverage which contains information required by the terms of the permit and by § 92a.54 (relating to general permits). An NOI is not an application.

NPDES—National Pollutant Discharge Elimination System.

NPDES form—An issued NPDES permit, the application, NOI or any DMR reporting form.

NPDES general permit or general permit—An NPDES permit that is issued for a clearly described category of point source discharges, when those discharges are substantially similar in nature and do not have the potential to cause significant adverse environmental impact.

NPDES permit—An authorization, license or equivalent control document issued by the Administrator or the Department to implement the requirements of 40 CFR Parts 122—124 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System; state program requirements; and procedures for decisionmaking) and the Federal Act.

New discharger—A building, structure, facility, activity or installation from which there is or may be a discharge of pollutants that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a final effective NPDES permit for discharges at that site.

New source—A building, structure, facility, activity or installation from which there is or may be a discharge of pollutants, the construction of which commenced after promulgation of standards of performance under section 306 of the Federal Act (33 U.S.C.A. § 1316) which are applicable to the source.

No exposure—Where industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to stormwater. Industrial materials and activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

Nonconventional pollutant—A pollutant which is not a conventional or toxic pollutant.

Nonpoint source—A pollutant source that is not a point source.

POTWs—Publicly Owned Treatment Works—

(i) A treatment works which is owned by a state or municipality.

(ii) The term includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature.

(iii) The term also includes sewers, pipes or other conveyances if they convey wastewater to a POTW treatment plant.

(iv) The term also means the municipality as defined in section 502(4) of the Federal Act (33 U.S.C.A. § 1362(4)), which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Perennial stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting a benthic macroinvertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by a United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.

Person—Any individual, public or private corporation, partnership, association, municipality or political subdivision of this Commonwealth, institution, authority, firm, trust, estate, receiver, guardian, personal representative, successor, joint venture, joint stock company, fiduciary; department, agency or instrumentality of State, Federal or local government, or an agent or employee thereof; or any other legal entity.

Point source—A discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, CAAP, CAFO, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged.

Pollutant—A contaminant or other alteration of the physical, chemical, biological or radiological integrity of surface water that causes or has the potential to cause pollution as defined in section 1 of the State Act (35 P. S. § 691.1).

Pollution prevention—Source reduction and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water or other resources, without having significant cross-media impacts.

Privately owned treatment works—A device or system used to treat wastewater that is not a POTW.

Process wastewater—Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

SRSTP—Single Residence Sewage Treatment Plant—A system of piping, tanks or other facilities serving a single family residence located on a single family residential lot, that solely collects, treats, and disposes of direct or indirect sewage discharges from the residence into surface waters of this Commonwealth.

SSO—Sanitary Sewer Overflow—An overflow of wastewater, or other untreated discharge from a separate sanitary sewer system (which is not a combined sewer system), which results from a flow in excess of the carrying capacity of the system or from some other cause prior to reaching the headworks of the sewage treatment facility.

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

Separate storm sewer—A conveyance or system of conveyances (including pipes, conduits, ditches and channels) primarily used for collecting and conveying stormwater runoff.

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

- (i) Open tile line intake structures.
- (ii) Sinkholes.
- (iii) Agricultural wellheads.

Sewage—A substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.

Significant biological treatment—The use of an aerobic or anaerobic biological treatment process in a treatment works to consistently achieve a 30-day average of at least 65% removal of BOD₅.

Small flow treatment facility—A treatment works designed to adequately treat sewage flows of not greater than 2,000 gallons per day for final disposal using a stream discharge or other methods approved by the Department.

Small municipal separate storm sewer system—A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(16).

State Act—The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

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

Stormwater discharge associated with construction activity—The discharge or potential discharge of stormwater from construction activities into waters of this Commonwealth, including clearing and grubbing, grading and excavation activities involving 1 acre (0.4 hectares) or more of earth disturbance activity, or an earth disturbance activity on any portion, part or during any stage of, a larger common plan of development or sale that involves 1 acre (0.4 hectares) or more of earth disturbance activity over the life of the project.

Stormwater discharge associated with industrial activity—The discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant, and as defined in 40 CFR 122.26(b)(14) (i)—(ix) and (xi).

Surface waters—Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process.

TMDL—Total Maximum Daily Load—The term as defined in Chapter 96 (relating to water quality standards implementation).

TSS—Total Suspended Solids—The pollutant parameter total suspended solids.

Toxic pollutant—Those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may, on the basis of information available to the Administrator or the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in these organisms or their offspring.

Treatment works—Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement the State and Federal Acts, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a

reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from the treatment.

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

WETT—Whole Effluent Toxicity Testing—

(i) A test, survey, study, protocol or assessment which includes the use of aquatic, bacterial, invertebrate or vertebrate species to measure acute or chronic toxicity, and any biological or chemical measure of bioaccumulation, bioconcentration or impact on established aquatic and biological communities.

(ii) The term includes any established, scientifically defensible method that is sufficiently sensitive to measure toxic effects.

WQBEL—Water Quality-based Effluent Limitation—An effluent limitation based on the need to attain or maintain the water quality criteria and to assure protection of designated and existing uses.

Water quality standards—The combination of water uses to be protected and the water quality criteria necessary to protect those uses.

Weekly average discharge limitation—The highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during the calendar week divided by the number of daily discharges during that week.

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

Whole effluent toxicity—The aggregate toxic effect of an effluent measured directly with a WETT.

§ 92a.3. Incorporation of Federal regulations by reference.

(a) The Federal NPDES regulations in subsection (b) are incorporated by reference to the extent that these provisions are applicable and not contrary to the law of the Commonwealth. In the event of a conflict between a Federal regulatory provision and a regulation of the Commonwealth, the provision expressly set out in this chapter shall be applied unless the Federal provision is more stringent.

(b) The following Federal regulatory provisions in 40 CFR Parts 122, 124, 125, and 132 are incorporated by reference:

- (1) 122.2 (relating to definitions) unless the definitions in § 92a.2 (relating to definitions) are different.
- (2) 123.25(c) (relating to requirements for permitting).
- (3) 124.57(a) (relating to public notice).
- (4) 125.1—125.3 (relating to criteria and standards for imposing technology-based treatment requirements under sections 301(b) and 402 of the act).

(5) 125.30—125.32 (relating to criteria and standards for determining fundamentally different factors under sections 301(b)(1)(A), 301(b)(2)(A) and (E) of the act).

(6) 125.70—125.73 (relating to criteria for determining alternative effluent limitations under section 316(a) of the act).

(7) 132 (relating to water quality guidance for the Great Lakes system).

(c) The Federal NPDES regulations in §§ 92a.4—92a.6, 92a.8, 92a.21, 92a.22, 92a.30—92a.35, 92a.41—92a.45, 92a.55, 92a.61, 92a.71—92a.74, 92a.85 and 92a.92 are incorporated by reference to the extent that these provisions are applicable and not contrary to the law of the Commonwealth. In the event of a conflict between a Federal regulatory provision and a regulation of the Commonwealth, the provision expressly set out in this chapter shall be applied unless the Federal provision is more stringent.

§ 92a.8. Confidentiality of information.

(a) The provisions of 40 CFR 122.7(b) (relating to confidentiality of information) are incorporated by reference.

(b) The Department may protect any information, other than effluent data, contained in NPDES forms, or other records, reports or plans pertaining to the NPDES permit program as confidential upon a showing by any person that the information is not a public record for the purposes of section 607 of the State Act (35 P. S. § 691.607). Documents that may be protected as confidential and are not public records are those that if made public would divulge an analysis of chemical and physical properties of coal (excepting information regarding the mineral or elemental content that is potentially toxic in the environment), and those that are confidential commercial information or methods or processes entitled to protection as trade secrets under State or Federal law. If, however, the information being considered for confidential treatment is contained in an NPDES form, the Department will forward the information to the Administrator for concurrence in any determination of confidentiality. If the Administrator does not concur that some or all of the information being considered for confidential treatment merits the protection and notifies the Department in writing, the Department will make available to the public that information determined by the Administrator in consultation with the EPA Office of General Counsel not entitled to protection in accordance with 40 CFR Part 2 (relating to public information).

(c) Information approved for confidential status, whether or not contained in an NPDES form, will be disclosed, upon request, to the Administrator, or an authorized representative, who shall maintain the disclosed information as confidential.

§ 92a.12. Treatment requirements.

(a) Specific treatment requirements and effluent limitations for each discharge must be established based on the more stringent of the following:

(1) Requirements specified in Chapters 16, 77, 87—90, 93, 95, 96 and 102.

(2) The applicable treatment requirements and effluent limitations to which a discharge is subject under this chapter and the Federal Act.

(3) The treatment requirements and effluent limitations of this title.

(b) When interstate or international agencies under an interstate compact or international agreement establish applicable effluent limitations or standards for dischargers of this Commonwealth to surface waters that are more stringent than those required by this title, the more stringent standards and limitations apply.

(c) If the Department has confirmed the presence or critical habitat of endangered or threatened species under Federal or State law or regulation, the Department will limit discharges to these waters to ensure protection of these species and critical habitat.

(d) New or changed water quality standards or treatment requirements may result from revisions to Chapters 16, 77, 87—90, 92a, 93, 95, 96 or 102, or other plans or determinations approved by the Department. Upon notice from the Department, a permittee of an affected facility shall promptly take the steps necessary to plan, obtain a permit or other approval, and construct facilities or undertake other actions that are necessary to comply with the new water quality standards or treatment requirements.

(e) Within 180 days of the receipt of the notice, the permittee shall submit to the Department either a report establishing that its existing facilities are capable of meeting the new water quality standards or treatment requirements, or a schedule setting forth the nature and date of completion of steps that are necessary to plan, obtain a permit or other approval, and construct facilities or undertake other actions that are necessary to comply with the new water quality standards or treatment requirements. The permittee shall comply with the schedule approved by the Department.

(f) Whenever a point of projected withdrawal for a new potable water supply not previously considered is identified by the Department, the Department will notify a discharger if more stringent effluent limitations are needed to protect the point of withdrawal. The discharger shall meet the more stringent effluent limitations in accordance with a schedule approved by the Department. The Department will issue orders directing dischargers to achieve compliance or will impose permit modifications with compliance schedules, when necessary.

Subchapter B. PERMIT APPLICATION AND SPECIAL NPDES PROGRAM REQUIREMENTS

Sec.

92a.21.	Application for a permit.
92a.22.	Signatories to permit applications and reports.
92a.23.	NOI for coverage under an NPDES general permit.
92a.24.	New or increased discharges, or change of waste streams.
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92a.28.	Industrial waste discharges.
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92a.30.	CAAP.
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92a.32.	Stormwater discharges.
92a.33.	Silviculture activities.
92a.34.	Cooling water intake structures.
92a.35.	New sources and new discharges.
92a.36.	Department action on NPDES permit applications.

§ 92a.21. Application for a permit.

(a) The provisions of 40 CFR 122.21(b), (g)(1)—(7), (9)—(13), (h), (i), (j), (k), (l), (m)(1) and (6), (p), (q) and (r) (relating to application for a permit (applicable to State programs, see § 123.25)) are incorporated by reference.

(b) *Duty to apply.* Persons wishing to discharge pollutants shall file a complete application for an individual permit at least 180 days before the date on which it is desired to commence the discharge of pollutants or within

another period of time that the Department determines is sufficient to ensure compliance with the Federal Act and the State Act, including applicable water quality standards and effluent limitations or standards.

(c) *Application forms.* Applicants for permits shall submit applications on Department permit application forms. At a minimum, the following are required to be submitted by applicants for a permit, except as otherwise specified:

(1) One original and two copies of the complete application. The Department may require additional copies, if needed to complete the review process.

(2) The applicable permit application fee and other fees as set forth in § 92a.26 (relating to application fees).

(3) If required by the application, proof that a written notice of an application has been submitted to the municipality and county in which the activity is or will be located at least 30 days before the Department may take action on the application. This notice must satisfy the notification requirements of section 1905-A of The Administrative Code of 1929 (71 P. S. § 510-5) and the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101—11107) if required.

(4) If required by the application, proof that public notice of the application has been published in a newspaper of general circulation in the locality in which the activity is or will be located once a week during a consecutive 4-week period.

(5) A description of the activities conducted by the applicant that require an NPDES permit; name, mailing address and location of the facility; up to four standard industrial codes (SIC) or North American Industry Classification System (NAICS) code that best reflect the principal products or services provided by the facility; the operator's name, address, telephone number, ownership status and entity status; a listing of all Department and EPA environmental quality permits for the facility; a topographic or other map extending 1 mile beyond the boundaries of the facility or activity; and a brief description of the nature of the business.

(6) Documentation that the applicant is in compliance with all existing Department permits, regulations, orders and schedules of compliance, or that any noncompliance with an existing permit has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including a compliance schedule set forth in the permit) consistent with § 92a.51 (relating to schedules of compliance) and other applicable Department regulations.

(d) *Additional information.* The Department may require other information or data needed to assess the discharges from the facility and any impact on receiving waters, and to determine whether to issue an NPDES permit, or what conditions or effluent limitations (including water quality based effluent limitations) to place in the permit. The additional information may include, but is not limited to:

(1) The results of an effluent assessment (or estimate for new dischargers or new sources), including a list of the mass and concentration of pollutants found (or estimated to be for new discharges or new sources) in the wastewater discharge, under Department protocols.

(2) Information and data relating to the biological, physical and chemical characteristics of waters and habitat immediately upstream and downstream of the proposed discharge, performed under a Department-approved protocol.

(3) The results of a waterbody assessment, under Department protocols, setting forth the impact (or potential impact) of the discharges on surface waters of this Commonwealth.

(4) The results of whole effluent toxicity testing, an instream cause/effect survey, or other tests or surveys as needed to determine the impact of a discharge on a waterbody performed under a Department-approved protocol.

(e) *Addresses.* The Department will publish at least annually a list of addresses to which applications and their accompanying papers shall be submitted.

(f) *Supporting documentation.* A person required to file an application shall also file additional modules, forms and applications, and supply data as specified by the Department. Additional modules, forms, applications and data are considered a part of the application.

§ 92a.23. NOI for coverage under an NPDES general permit.

(a) Except as provided for in subsection (c), eligible dischargers, who wish to be covered by a general permit, shall file a complete NOI as instructed in the NOI. At a minimum, the NOI must identify each point source for which coverage under the general permit is requested; demonstrate that each point source meets the eligibility requirements for inclusion in the general permit; demonstrate that the discharge from the point sources, individually or cumulatively, will not cause or contribute to a violation of an applicable water quality standard established under Chapter 93 (relating to water quality standards) and include other information the Department may require. By signing the NOI, the discharger agrees to accept all conditions and limitations imposed by the general permit.

(b) If the NOI is acceptable, the Department will process the NOI in accordance with § 92a.54 (relating to general permits).

(c) General permits for POTWs, CSOs, CAFOs, MS4s, primary industrial facilities, and stormwater discharges associated with industrial activities must require that an NOI be submitted for each issuance and reissuance of coverage under the general permit. A general permit for any other category of discharges may be designed to allow discharges to be authorized to discharge without submitting a NOI for coverage under the general permit. Alternatively, such a general permit may require an initial NOI for issuance of coverage, but no subsequent NOI for reissuance of coverage. The Department will consider the following in deciding whether an NOI must be submitted for coverage under the general permit: the type of discharge; the potential for toxic and conventional pollutants in the discharge; the estimated number of discharges to be covered by the permit and the cumulative impact of the discharges. The public notice of the general permit will provide the reasons for not requiring the NOI.

§ 92a.24. New or increased discharges, or change of waste streams.

(a) *Sewage discharges and industrial waste discharges.* Facility expansions, production increases, process modifications, or any change of wastestream, that may result in an increase of pollutants that have the potential to exceed ELGs or violate effluent limitations specified in the permit, or that may result in a new discharge, or a discharge of new or increased pollutants for which no effluent limitation has been issued, must be approved in

writing by the Department before the permittee may commence the new or increased discharge, or change of wastestream. The Department will determine if a permittee will be required to submit a new permit application and obtain a new or amended permit before commencing the new or increased discharge, or change of wastestream.

(b) *Stormwater discharges associated with construction activity.* The permittee shall notify the Department before initiating any new or expanded disturbed area not identified in the permit application. The Department will determine if a permittee will be required to submit a new permit application and obtain a new or amended permit before the permittee may initiate construction activity in the new or expanded disturbed area.

§ 92a.25. Incomplete applications or incomplete NOIs.

The Department will not process an application or NOI that is incomplete or otherwise deficient. An application for an NPDES individual permit is complete when the Department receives an application form and supplemental information completed in accordance with this chapter and the instructions with the application. An NOI to be covered by an NPDES general permit issued by the Department is complete when the Department receives an NOI setting forth the information specified in the NOI and by the terms of the general permit.

§ 92a.26. Application fees.

(a) The application fee is payable to the Clean Water Fund according to the fee schedule set forth in this section. All flows listed in this section are annual average design flows.

(b) Applications fees for individual NPDES permits for discharges of treated sewage are:

SRSTP	\$100 for new; \$100 for reissuance
Small flow treatment facility	\$250 for new; \$250 for reissuance
Minor facility < 50,000 GPD	\$500 for new; \$250 for reissuance
Minor facility > = 50,000 GPD < 1 MGD	\$1,000 for new; \$500 for reissuance
Minor facility with CSO	\$1,500 for new; \$750 for reissuance
Major facility > = 1 MGD < 5 MGD	\$2,500 for new; \$1,250 for reissuance
Major facility > = 5 MGD	\$5,000 for new; \$2,500 for reissuance
Major facility with CSO	\$10,000 for new; \$5,000 for reissuance

(c) Applications fees for individual NPDES permits for discharges of industrial waste are:

Minor facility not covered by an ELG	\$1,000 for new; \$500 for reissuance
Minor facility covered by an ELG	\$3,000 for new; \$1,500 for reissuance
Major facility < 250 MGD	\$10,000 for new; \$5,000 for reissuance
Major facility > = 250 MGD	\$50,000 for new; \$25,000 for reissuance

Mining activity	\$1,000 for new; \$500 for reissuance
Stormwater	\$2,000 for new; \$1,000 for reissuance

(d) Application fees for individual NPDES permits for other facilities or activities are:

CAFO	\$1,500 for new; \$750 for reissuance
CAAP	\$1,500 for new; \$750 for reissuance
MS4	\$5,000 for new; \$2,500 for reissuance

(e) Application fees for transfers of individual permits are:

SRSTP	\$50
Small flow treatment facility	\$100
Other domestic wastewater	\$200
Industrial waste	\$500

(f) Application fees for amendments to individual permits are:

Amendment initiated by Department	No charge
Minor amendment	\$200
Major amendment	Same as reissuance permit fee

(g) NOI fees for coverage under a general permit under § 92a.23 (relating to NOI for coverage under an NPDES general permit) will be established in the general permit. NOI fees may not exceed \$2,500, except as provided in Chapter 102 (relating to erosion and sediment control). An eligible person shall submit to the Department the applicable NOI fee before the Department approves coverage under the general permit for that person.

(h) 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 contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

(i) Any Federal or State agency or independent state commission that provides funding to the Department for the implementation of the NPDES program through terms and conditions of a mutual agreement may be exempt from the fees in this section.

§ 92a.27. Sewage discharges.

(a) The following additional application requirements apply to new and existing sewage dischargers (including POTWs and privately owned treatment works), as applicable:

(1) The following sewage dischargers shall provide the results of whole effluent toxicity testing to the Department:

(i) Sewage dischargers with design influent flows equal to or greater than 1.0 million gallons per day.

(ii) Sewage dischargers with approved pretreatment programs or who are required to develop a pretreatment program.

(2) In addition to the sewage dischargers in paragraph (1), the Department may require other sewage discharg-

ers to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(i) The variability of the pollutants or pollutant parameters in the sewage effluent (based on chemical-specific information, the type of treatment facility and types of industrial contributors).

(ii) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow).

(iii) Existing controls on point or nonpoint sources, including calculations of TMDLs for the waterbody segment, and the relative contribution of the sewage discharger.

(iv) Receiving surface water characteristics, including possible or known water quality impairment, and whether the sewage discharges to an estuary, one of the Great Lakes or a surface water that is classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards).

(v) Other considerations including, but not limited to, the history of toxic impact and compliance problems at the sewage discharge facility, which the Department determines could cause or contribute to adverse water quality impacts.

(3) For sewage dischargers required under paragraph (1) or (2) to conduct toxicity testing, the EPA's methods or other protocols approved by the Department, which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity and approved by the Department, shall be used. The testing shall have been performed since the last NPDES permit reissuance, or when requested by the Department, whichever occurred later.

(b) CSO dischargers shall submit the following information:

(1) The results of an evaluation determining the frequency, extent and cause of the CSO discharge, including identifying the points of inflow into combined systems.

(2) An evaluation of the water quality impacts of the CSO discharge on receiving waters.

(3) A description of the nine minimum controls (NMCs) described in the EPA publication entitled "Combined Sewer Overflows—Guidance for Nine Minimum Controls" (EPA publication number 832-B-95-003 (September 1995) as amended or updated) used at the facility to minimize or eliminate the CSO discharge impact on receiving water quality.

(4) A long-term control plan (LTCP) to minimize or eliminate the CSO discharge with an implementation schedule.

(5) An update on the progress made with the implementation of the LTCP and future activities with schedules to comply with water quality standards.

§ 92a.28. Industrial waste discharges.

(a) *Existing industrial discharges.* Dischargers of industrial waste from sources other than new sources or new discharges subject to subsection (b), nonprocess wastewater discharges subject to subsection (c) and stormwater discharges associated with industrial activity subject to § 92a.32 (relating to stormwater discharges), shall submit the applicable information required to be submitted under 40 CFR 122.21(g)(1)–(7) and (g)(9)–(13) (relating to application for a permit (applicable to State programs, see § 123.25)).

(b) *New sources and new discharges.* Except for new discharges of industrial facilities that discharge nonprocess wastewater subject to subsection (c) and new discharges of stormwater associated with industrial activity subject to § 92a.32, new discharges and new sources applying for NPDES permits shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(k).

(c) *Nonprocess industrial waste discharges.* Except for stormwater discharges associated with industrial activity subject to § 92a.32, industrial waste dischargers applying for NPDES permits that discharge only nonprocess wastewater not regulated by an effluent limitation guideline or new source performance standard shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(h).

§ 92a.29. CAFO.

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

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

(2) By February 28, 2002, for any other CAFO in existence on November 18, 2000.

(3) Prior to beginning operation, for any new or expanded CAFO that began operation after November 18, 2000, and before October 22, 2005.

(b) A poultry operation that is a CAFO, which is in existence on October 22, 2005, and that is not using liquid manure handling systems, shall apply for an NPDES permit no later than the following, and shall obtain a permit:

(1) By April 24, 2006, for operations with 500 or more AEU's.

(2) By January 22, 2007, for all other operations.

(c) After October 22, 2005, a new operation, and an existing operation that will become a CAFO due to changes in operations such as additional animals or loss of land suitable for manure application, shall do the following:

(1) Apply for an NPDES permit at least 180 days before the operation commences or changes.

(2) Obtain an NPDES permit prior to commencing operations or making changes, as applicable.

(d) Other operations not described in subsections (a)—(c) that will become newly regulated as a CAFO for the first time due to the changes in the definition of a CAFO in § 92a.2 (relating to definitions) shall apply for a permit by April 24, 2006, and obtain a permit.

(e) The NPDES permit application requirements include, but are not limited to, the following:

(1) A nutrient management plan meeting the requirements of Chapter 83, Subchapter D (relating to nutrient management) and approved by the county conservation district or the State Conservation Commission. The plan must include:

(i) Manure application setbacks for the CAFO of at least 100 feet, or vegetated buffers at least 35 feet in width.

(ii) A statement that manure that is stockpiled for 15 consecutive days or longer shall be under cover or otherwise stored to prevent discharge to surface water during a storm event up to and including the appropriate

design storm for that type of operation under § 91.36(a)(1) and (5) (relating to pollution control and prevention at agricultural operations).

(2) An erosion and sediment control plan meeting the requirements of Chapter 102 (relating to erosion and sediment control).

(3) When required under § 91.36(a), a water quality management permit, permit application, approval or engineer's certification, as required.

(4) A preparedness, prevention and contingency plan for pollutants related to the CAFO operation.

(5) A water quality management permit application as required under this chapter and Chapter 91 (relating to general provisions), when treatment facilities that would include a treated wastewater discharge are proposed.

(6) Measures to be taken to prevent discharge to surface water from storage of raw materials such as feed and supplies. These measures may be included in the nutrient management plan.

§ 92a.30. CAAP.

The provisions of 40 CFR 122.24 (relating to concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25)) are incorporated by reference.

§ 92a.31. Aquaculture projects.

The provisions of 40 CFR 122.25, 125.10 and 125.11 (relating to aquaculture projects (applicable to State NPDES programs, see 123.25); and criteria for issuance of permits to aquaculture projects) are incorporated by reference.

§ 92a.32. Stormwater discharges.

(a) The provisions of 40 CFR 122.26(a), (b), (c)(1), (d), (e)(1), (3)—(9) and (f)—(g) (relating to storm water discharges (applicable to State NPDES programs, see § 123.25)) and 122.30—122.37 are incorporated by reference.

(b) *No exposure stormwater discharges.* Discharges composed entirely of stormwater are not stormwater discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to stormwater and the discharger satisfies the conditions in 40 CFR 122.26(g). A facility or activity with no stormwater discharges associated with industrial activity may qualify for a conditional exclusion from a permit, provided that the facility or activity does not discharge to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93 (relating to water quality standards). To qualify for the conditional exclusion from a permit, the responsible person shall complete, sign and submit to the Department a "No Exposure Certification" at least once every 5 years in lieu of a permit application.

(c) *Municipal separate storm sewer systems.* The operator of a discharge from a large, medium or small municipal separate storm sewer shall submit in its application the information required to be submitted under 40 CFR Part 122 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System). Permits for discharges from municipal separate storm sewer systems are not eligible for a "no exposure" conditional exclusion from a permit under subsection (b).

(d) *Stormwater discharges associated with construction activity.* Applicants for individual NPDES permits for the discharge of stormwater associated with construction

activity shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(g)(7) (relating to application for a permit (applicable to State programs, see § 123.25)) and 122.26(c)(1). In addition, stormwater dischargers shall submit information required in Chapter 102 (relating to erosion and sediment control) as appropriate. Permits for stormwater discharges associated with construction activity are not eligible for a “no exposure” conditional exclusion from a permit under subsection (b).

(e) *Stormwater discharges associated with industrial activity.* Applicants for individual NPDES permits for the discharge of stormwater associated with industrial activity shall submit the information required to be submitted, as applicable, under 40 CFR 122.21(g)(7) and 122.26(c)(1).

§ 92a.33. Silviculture activities.

The provisions of 40 CFR 122.27 (relating to silvicultural activities (applicable to State NPDES programs, see § 123.25)) are incorporated by reference.

§ 92a.34. Cooling water intake structures.

(a) The provisions of 40 CFR 125.80—125.89 (relating to requirements applicable to cooling water intake structures for new facilities under section 316(b) of the Act) are incorporated by reference.

(b) The location, design, construction and capacity of cooling water intake structures, in connection with a point source, must reflect the BTA for minimizing adverse environmental impacts in accordance with the State Act and section 316(b) of the Federal Act (33 U.S.C.A. § 1326(b)).

§ 92a.35. New sources and new discharges.

The provisions of 40 CFR 122.29 (relating to new sources and new dischargers) are incorporated by reference.

§ 92a.36. Department action on NPDES permit applications.

The Department will not issue an NPDES permit unless the application is complete and the documentation submitted meets the requirements of this chapter. The applicant, through the application and its supporting documentation, shall demonstrate that the application is consistent with:

(1) Plans approved by the Department under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20), wastewater facility capabilities, service areas, selected alternatives and any adverse effects on the environment of reasonably foreseeable future development within the area of the project resulting from construction of the wastewater facility.

(2) Other applicable environmental laws and regulations administered by the Commonwealth, Federal environmental statutes and regulations, and if applicable, river basin commission requirements created by interstate compact.

(3) Standards established for the wastewater facilities through permits to implement the requirements of 40 CFR Parts 122, 123, 124 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System; State program requirements; and procedures for decisionmaking) and the Federal Act.

Subchapter C. PERMITS AND PERMIT CONDITIONS

Sec.	
92a.41.	Conditions applicable to all permits.
92a.42.	Additional conditions applicable to specific categories of NPDES permits.
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§ 92a.41. Conditions applicable to all permits.

(a) Unless indicated otherwise in this section, NPDES permits must include the permit conditions specified in 40 CFR 122.41(a)—(m) (relating to conditions applicable to all permits (applicable to State programs, see § 123.25)) including the following:

- (1) Duty to comply.
- (2) Duty to reapply.
- (3) Need to halt or reduce activity not a defense.
- (4) Duty to mitigate.
- (5) Proper operation and maintenance.
- (6) Permit actions.
- (7) Property rights.
- (8) Duty to provide information.
- (9) Inspection and entry.
- (10) Monitoring and records.
- (11) Signature requirements.
- (12) Reporting requirements.
- (13) Bypass.

(b) The permittee shall comply with the immediate oral notification requirements of § 91.33 (relating to incidents causing or threatening pollution). Oral notification is required as soon as possible, but no later than 4 hours after the permittee becomes aware of the incident causing or threatening pollution. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the incident causing or threatening pollution. The written submission must conform to the requirements of 40 CFR 122.41(l)(6).

(c) The discharger may not discharge floating materials, scum, sheen, or substances that result in deposits in the receiving water. Except as provided for in the permit, the discharger may not discharge foam, oil, grease, or substances that produce an observable change in the color, taste, odor or turbidity of the receiving water.

§ 92a.47. Sewage permit.

(a) Sewage, except that discharged from a CSO that is in compliance with subsection (b), or as provided for in subsections (f)—(i), shall be given a minimum of secondary treatment. Secondary treatment for sewage is that treatment that includes significant biological treatment and accomplishes the following:

(1) Monthly average discharge limitation for BOD₅ and TSS may not exceed 30 milligrams per liter. If CBOD₅ is specified instead of BOD₅ the limitation may not exceed 25 milligrams per liter.

(2) Weekly average discharge limitation for BOD₅ and TSS may not exceed 45 milligrams per liter for POTW facilities. If CBOD₅ is specified instead of BOD₅ the limitation may not exceed 40 milligrams per liter.

(3) On a concentration basis, the monthly average percent removal of BOD₅ or CBOD₅, and TSS, must be at least 85% for POTW facilities.

(4) From May through September, a monthly average discharge limitation for fecal coliform of 200/100 mL as a geometric mean and an instantaneous maximum effluent limitation not greater than 1,000/100 mL.

(5) From October through April, a monthly average discharge limitation for fecal coliform of 2,000/100 mL as a geometric mean and an instantaneous maximum effluent limitation not greater than 10,000/100 mL.

(6) Provision for the disposal or beneficial use of sludge in accordance with applicable Department regulations.

(7) Compliance with § 95.2(1) and (2) (relating to effluent standards for industrial waste).

(8) Compliance with § 92a.48 (b) (relating to industrial waste permit) if chlorine is used.

(b) Dischargers of sewage from a CSO shall implement, as approved by the Department, nine minimum controls (NMCs) and a long-term control plan (LTCP) to minimize or eliminate the CSO discharge impact on the water quality of the receiving surface water.

(c) Discharges from an SSO are prohibited.

(d) When pollutants contributed by indirect dischargers result in interference or pass through, and a violation is likely to recur, a permittee shall develop and implement specific local limits for indirect dischargers and other users, as appropriate, that together with appropriate sewerage facility or operational changes, are necessary to ensure renewed or continued compliance with the plant's NPDES permit or sludge use or disposal practices.

(e) POTWs that serve indirect dischargers shall give notice to the Department in accordance with 40 CFR 122.42(b) (relating to additional conditions applicable to specific categories of NPDES permits (applicable to State NPDES programs, see § 123.25)).

(f) POTWs with effluent limits that are less stringent than those specified in subsection (a)(1) and (2) in effect on October 9, 2010, shall meet the requirements of subsection (a)(1) and (2) when a new or amended water quality management permit authorizing an increase in the design flow of the facility is issued under the provisions of Chapter 91 (relating to general provisions).

(g) POTWs subject to this section may not be capable of meeting the percentage removal requirements established under subsection (a)(3) during wet weather, where the treatment works receive flows from combined sewers (that is, sewers which are designed to transport both storm water and sanitary sewage). For those treatment works, the decision must be made on a case-by-case basis as to whether any attainable percentage removal level can be defined, and if so, what the level should be.

(h) POTWs subject to this section may not be capable of meeting the percentage removal requirements established under subsection (a)(3) during dry weather, where the treatment works receive flows from combined sewers.

The Department may substitute less stringent removal requirements than that specified in subsection (a)(3) for any POTW with less concentrated influent wastewater for combined sewers during dry weather. The Department may substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements specified in subsection (a)(3) provided that the permittee satisfactorily demonstrates all of the following:

(1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits, but the percent removal requirements cannot be met due to less concentrated influent wastewater.

(2) To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent effluent concentrations than would otherwise be required by the concentration-based standards.

(3) The less concentrated influent wastewater does not result from either excessive infiltration or clear water indirect dischargers during dry weather periods. The determination of whether the less concentrated wastewater results from excessive infiltration is discussed in 40 CFR 35.2005(b)(28) (relating to definitions), plus the additional criterion that either 40 gallons per capita per day or 1,500 gallons per inch diameter per mile of sewer may be used as the threshold value for that portion of the dry weather base flow attributed to infiltration. If the less concentrated influent wastewater is the result of clear water indirect dischargers, the treatment works must control these discharges pursuant to 40 CFR Part 403 (relating to general pretreatment regulations for existing and new sources of pollution).

(i) The Department may substitute less stringent removal requirements than that specified in subsection (a)(3) for any POTW with less concentrated influent wastewater for separate sewers, provided that the permittee satisfactorily demonstrates all of the following:

(1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated influent wastewater.

(2) To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards.

(3) The less concentrated influent wastewater is not the result of excessive inflow/infiltration. The determination of whether the less concentrated wastewater is the result of excessive inflow/infiltration will be based on the definition of excessive inflow/infiltration in 40 CFR 35.2005(b)(16), plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (that is, wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

§ 92a.48. Industrial waste permit.

(a) Industrial waste regulated by this chapter must meet the following requirements:

(1) EPA-promulgated effluent limitation guidelines established under section 304(b) of the Federal Act (33 U.S.C.A. § 1314(b)).

(2) Compliance with § 95.2 (relating to effluent standards for industrial waste).

(3) For those industrial categories for which no effluent limitations have been established under paragraph (1), Department-developed technology-based limitations estab-

lished in accordance with 40 CFR 125.3 (relating to technology-based treatment requirements in permits).

(b) For facilities or activities using chlorination, the following apply:

(1) If the EPA adopts a National categorical ELG promulgating limits for Total Residual Chlorine (TRC) or free available chlorine for a specific industry or activity under section 301 or 304(b) of the Federal Act (33 U.S.C.A. §§ 1311 and 1314(b)), that ELG constitutes BAT for the industry or activity. If the EPA has not promulgated a National ELG for TRC or free available chlorine for an industry or activity, the Department may develop a facility-specific BAT effluent limitation for TRC. Factors, which will be considered in developing a facility-specific BAT effluent limitation, include the following:

- (i) The age of equipment and facilities involved.
- (ii) The engineering aspects of the application of various types of control techniques and alternatives to the use of chlorine or reductions in the volume of chlorine used during the disinfection process.
- (iii) The cost of achieving the effluent reduction.
- (iv) Nonwater quality environmental impacts (including energy requirements).
- (v) Other factors the Department deems appropriate.

(2) For facilities where the EPA has not promulgated a National ELG setting forth limits for TRC or free available chlorine for an industry or activity, and the Department has not developed a facility-specific BAT effluent limitation for TRC under the factors in paragraph (1), an effluent limitation for TRC of 0.5 milligrams per liter (30-day average) constitutes BAT.

(3) Facilities using chlorination that discharge to an Exceptional Value Water, or to a High Quality Water where economic or social justification under § 93.4c(b) (1)(iii) (relating to implementation of antidegradation requirements) has not been demonstrated under applicable State or Federal law or regulations, shall discontinue chlorination or dechlorinate their effluents prior to discharge into the waters.

§ 92a.50. CAAP.

(a) Each discharger shall prepare and implement a BMP plan that addresses:

- (1) Solids and excess feed management and removal.
- (2) Proper facility operation and maintenance.
- (3) Nonnative species loss prevention.
- (4) Facility personnel training.
- (5) Removal, handling and disposal/utilization of bio-residual solids (sludge).

(b) Permittees shall report any investigational/therapeutic drugs usage as follows:

(1) For investigational/new drugs, the permittee shall provide the Department with an oral notification within 7 days of initiating application of the drug, and a New Drug Usage Report shall be filed monthly.

(2) Changes in or increases in usage rates shall be reported to the Department through both oral notification and written report on the Drug Usage Report Form, quarterly.

(c) Products or chemicals that contain any carcinogenic ingredients are prohibited, except that limited use of those chemicals may be permitted provided that the permittee shall:

(1) Thoroughly investigate the use of alternative chemicals.

(2) Demonstrate that no suitable alternatives are available.

(3) Demonstrate through sampling or calculation that any carcinogen in the proposed chemical will not be detectable in the final effluent, using the EPA-approved analytic method for wastewater analysis with the lowest published detection limits.

§ 92a.51. Schedules of compliance.

(a) With respect to an existing discharge that is not in compliance with the water quality standards and effluent limitations or standards in § 92a.44 or § 92a.12 (relating to establishing limitations, standards, and other permit conditions; and treatment requirements), the applicant shall be required in the permit to take specific steps to remedy a violation of the standards and limitations in accordance with a legally applicable schedule of compliance, in the shortest, reasonable period of time, the period to be consistent with the Federal Act. Any schedule of compliance specified in the permit must require compliance with final enforceable effluent limitations as soon as practicable, but in no case longer than 5 years, unless a court of competent jurisdiction issues an order allowing a longer time for compliance.

(b) If the period of time for compliance specified in subsection (a) exceeds 1 year, a schedule of compliance will be specified in the permit that will set forth interim requirements and the dates for their achievement. If the time necessary for completion of the interim requirement such as the construction of a treatment facility is more than 1 year and is not readily divided into stages for completion, interim dates will be specified for the submission of reports of progress towards completion of the interim requirement. The time between interim dates may not exceed 1 year. For each NPDES permit schedule of compliance, interim dates and the final date for compliance must, to the extent practicable, fall on the last day of the months of March, June, September and December.

(c) Either before or up to 14 days following each interim date and the final date of compliance, the permittee shall provide the Department with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

§ 92a.54. General permits.

(a) *Coverage and purpose.* The Department may issue a general permit, in lieu of issuing individual permits, for a clearly and specifically described category of point source discharges, if the point sources meet the following conditions:

(1) Involve the same, or substantially similar, types of operations.

(2) Discharge the same types of wastes.

(3) Require the same effluent limitations or operating conditions, or both.

(4) Require the same or similar monitoring.

(5) Do not discharge toxic or hazardous pollutants as defined in sections 307 and 311 of the Federal Act (33 U.S.C.A. §§ 1317 and 1321) or any other substance that—because of its quantity; concentration; or physical, chemical or infectious characteristics—may cause or contribute to an increase in mortality or morbidity in either an individual or the total population, or pose a substan-

tial present or future hazard to human health or the environment when discharged into surface waters.

(6) Are more appropriately controlled under a general permit than under individual permits, in the opinion of the Department.

(7) Individually and cumulatively do not have the potential to cause or contribute to a violation of an applicable water quality standard established under Chapter 93 (relating to water quality standards) or cause significant adverse environmental impact.

(8) Do not discharge to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93.

(b) *Administration of general permits.* General permits may be issued, amended, suspended, revoked, reissued or terminated under this chapter. Issuance of a general permit does not exempt a person from compliance with this title. General permits have a fixed term not to exceed 5 years.

(c) *Department specification.* The Department may specify in the general permit that an eligible person who has submitted a timely and complete NOI is authorized to discharge in accordance with the terms of the permit under one of the following:

(1) Immediately upon submission of the NOI.

(2) After a waiting period following receipt of the NOI by the Department as specified in the general permit.

(3) Upon receipt of notification of approval of coverage under a general permit from the Department.

(d) *Department notification.* The Department will, as applicable, notify a discharger that it is or is not covered by a general permit. A discharger so notified may request an individual permit.

(e) *Denial of coverage.* The Department will deny coverage under a general permit when one or more of the following conditions exist:

(1) The discharge, individually or in combination with other similar discharges, is or has the potential to be a contributor of pollution, as defined in the State Act, which is more appropriately controlled under an individual permit.

(2) The discharger is not, or will not be, in compliance with any one or more of the conditions of the general permit.

(3) The applicant has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit, schedule of compliance or order issued by the Department.

(4) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

(5) Categorical point source effluent limitations are promulgated by the EPA for those point sources covered by the general permit.

(6) The discharge is not, or will not, result in compliance with an applicable effluent limitation or water quality standard.

(7) Other point sources at the facility require issuance of an individual permit, and issuance of both an individual and a general permit for the facility would constitute an undue administrative burden on the Department.

(8) The Department determines that the action is necessary for any other reason to ensure compliance with the Federal Act, the State Act or this title.

(9) The discharge would be to a surface water classified as a High Quality Water or an Exceptional Value Water under Chapter 93.

(f) *Requiring an individual permit.* The Department may revoke or terminate coverage under a general permit, and require the point source discharger to apply for and obtain an individual permit for any of the reasons in subsection (e). An interested person may petition the Department to take action under this subsection. Upon notification by the Department under this subsection that an individual permit is required for a point source, the discharger shall submit a complete NPDES application, in conformance with this chapter, within 90 days of receipt of the notification, unless the discharger is already in possession of a valid individual permit. Failure to submit the application within 90 days will result in automatic termination of coverage of the applicable point sources under the general permit. Timely submission of a complete application will result in continuation of coverage of the applicable point sources under the general permit, until the Department takes final action on the pending individual permit application.

(g) *Action of the Department.* Action of the Department denying coverage under a general permit under subsection (e), or requiring an individual permit under subsection (f), is not a final action of the Department until the discharger submits and the Department takes final action on an individual permit application.

(h) *Termination of general permit.* When an individual permit is issued for a point source that is covered under a general permit, the applicability of the general permit to that point source is automatically terminated on the effective date of the individual permit.

(i) *Coverage under general permit.* A point source excluded from a general permit solely because it already has an individual permit may submit an NOI under § 92a.23 (relating to NOI for coverage under an NPDES general permit). If the NOI is acceptable, the Department will revoke the individual permit and notify the source that it is covered under the general permit.

Subchapter D. MONITORING AND ANNUAL FEES

Sec.
92a.61. Monitoring.
92a.62. Annual fees.

§ 92a.61. Monitoring.

(a) The provisions of 40 CFR 122.48 (relating to requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25)) are incorporated by reference.

(b) The Department may impose reasonable monitoring requirements on any discharge, including monitoring of the surface water intake and discharge of a facility or activity, other operational parameters that may affect effluent quality, and of surface waters adjacent to or associated with the intake or discharge flow of a facility or activity. The Department may require submission of data related to the monitoring.

(c) Each person who discharges pollutants may be required to monitor and report all toxic, conventional, nonconventional and other pollutants in its discharge, at least once a year, and on a more frequent basis if required by a permit condition. The monitoring requirements will be specified in the permit.

(d) Except for stormwater discharges subject to the requirements of subsection (h), a discharge authorized by an NPDES permit for a facility that is not a minor facility or contains toxic pollutants for which an effluent standard has been established by the Administrator under section 307(a) of the Federal Act (33 U.S.C.A. § 1317(a)) shall be monitored by the permittee for at least the following:

(1) Flow (in GPD or MGD).

(2) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) that are subject to abatement under the terms and conditions of the permit.

(3) Pollutants that the Department finds, on the basis of information available to it, could have an impact on the quality of this Commonwealth's waters or the quality of waters in other states.

(4) Pollutants specified by the Administrator in regulations issued under the Federal Act as subject to monitoring.

(5) Pollutants in addition to those in paragraphs (2)—(4) that the Administrator requests in writing to be monitored.

(e) Each effluent flow or pollutant required to be monitored under subsections (c) and (d) shall be monitored at intervals sufficiently frequent to yield data that reasonably characterize the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels that may be monitored at less frequent intervals.

(f) The permittee shall maintain records of the information resulting from any monitoring activities required of it in its NPDES permit as follows:

(1) Records of monitoring activities and results must include for all samples:

- (i) The date, exact place and time of sampling.
- (ii) The dates analyses were performed.
- (iii) Who performed the analyses.
- (iv) The analytical techniques/methods used.
- (v) The results of the analyses.

(2) The permittee shall also be required to retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. This period of retention may be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Department or the Administrator.

(g) The permittee shall periodically report, at a frequency of at least once per year, using a format or process established by the Department, results obtained by a permittee pursuant to monitoring requirements. In addition to these results, the Department may require submission of other information regarding monitoring results it determines to be necessary.

(h) Requirements to report monitoring results from stormwater discharges associated with industrial activity, except those subject to an effluent limitation guideline or an NPDES general permit, will be established in a case-by-case basis with a frequency dependent on the nature and effect of the discharge.

(i) The monitoring requirements under this section must be consistent with any National monitoring, recording and reporting requirements specified by the Administrator in regulations issued under the Federal Act.

(j) The Department may require that the permittee perform additional sampling for limited periods for the purpose of TMDL development, or for other reasons that the Department determines are appropriate.

§ 92a.62. Annual fees.

(a) Permittees shall pay an annual fee to the Clean Water Fund. The annual fee must be for the amount indicated in the following schedule and is due on each anniversary of the effective date of the permit. The flows listed in this section are annual average design flows.

(b) Annual fees for individual NPDES permits for discharges of treated sewage are:

SRSTP	\$0
Small flow treatment facility	\$0
Minor facility < 50,000 GPD	\$250
Minor facility > = 50,000 GPD < 1 MGD	\$500
Minor facility with CSO	\$750
Major facility > = 1 MGD < 5 MGD	\$1,250
Major facility > = 5 MGD	\$2,500
Major facility with CSO	\$5,000

(c) Annual fees for individual NPDES permits for discharges of industrial waste are:

Minor facility not covered by an ELG	\$500
Minor facility covered by an ELG	\$1,500
Major facility < 250 MGD	\$5,000
Major facility > = 250 MGD	\$25,000
Mining activity	\$0
Stormwater	\$1,000

(d) Annual fees for individual NPDES permits for other facilities or activities are:

CAFO	\$0
CAAP	\$0
MS4	\$500

(e) 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 contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

(f) Any Federal or State agency or independent state commission that provides funding to the Department for the implementation of the NPDES Program through terms and conditions of a mutual agreement may be exempt from the fees in this section.

Subchapter E. TRANSFER, MODIFICATION, REVOCATION AND REISSUANCE, TERMINATION OF PERMITS, REISSUANCE OF EXPIRING PERMITS AND CESSATION OF DISCHARGE

- Sec.
- 92a.71. Transfer of permits.
- 92a.72. Modification or revocation and reissuance of permits.
- 92a.73. Minor modification of permits.
- 92a.74. Termination of permits.
- 92a.75. Reissuance of expiring permits.
- 92a.76. Cessation of discharge.

§ 92a.75. Reissuance of expiring permits.

(a) A permittee who wishes to continue to discharge after the expiration date of its NPDES permit shall submit an application for reissuance of the permit at least 180 days prior to the expiration of the permit unless permission has been granted for a later date by the Department. The application fees specified in § 92a.26 (relating to application fees) apply.

(b) Upon completing review of the application, the Department may reissue a permit if, based on up-to-date information on the permittee's wastewater treatment practices and the nature, contents and frequency of the permittee's discharge, the Department determines that:

(1) The permittee is in compliance with existing Department-issued permits, regulations, orders and schedules of compliance, or that any noncompliance with an existing permit has been resolved by an appropriate compliance action.

(2) The discharge is, or will be under a compliance schedule issued under § 92a.51 (relating to schedules of compliance) and other applicable regulations, consistent with the applicable water quality standards, effluent limitations or standards and other legally applicable requirements established under this title, including revisions or modifications of the standards, limitations and requirements that may have occurred during the term of the existing permit.

Subchapter F. PUBLIC PARTICIPATION

- Sec.
- 92a.81. Public access to information.
- 92a.82. Public notice of permit applications and draft permits.
- 92a.83. Public notice of public hearing.
- 92a.84. Public notice of general permits.
- 92a.85. Notice to other government agencies.
- 92a.86. Notice of issuance or final action on a permit.
- 92a.87. Notice of reissuance of permits.
- 92a.88. Notice of appeal.

§ 92a.84. Public notice of general permits.

(a) Public notice of every proposed general permit will be published in the *Pennsylvania Bulletin*. The contents of the public notice will include at least the following:

(1) The name, address and phone number of the agency issuing the public notice.

(2) A clear and specific description of the category of point source discharges eligible for coverage under the proposed general permit.

(3) A brief description of the reasons for the Department's determination that the category of point source discharges is eligible for coverage under a general permit in accordance with these standards.

(4) A brief description of the terms and conditions of the proposed general permit, including applicable effluent limitations, BMPs and special conditions.

(5) A brief description of the procedures for making the final determinations, and other means by which interested persons may influence or comment on those determinations.

(6) The address and phone number of the Commonwealth agency at which interested persons may obtain further information and a copy of the proposed general permit.

(7) The NOI fee for coverage under the general permit.

(b) There will be a 30-day period following publication of notice during which written comments may be submitted by interested persons before the Department makes its final determinations. Written comments submitted during the 30-day comment period will be retained by the Department and considered in making the final determinations. The period for comment may be extended at the discretion of the Department for one additional 15-day period. The Department will provide an opportunity for any interested person or group of persons, any affected State, any affected interstate agency, the Administrator or any interested agency, to request or petition for a public hearing with respect to the proposed general permit. The request or petition for public hearing, which must be filed within the 30-day period allowed for filing of written comments, must indicate the interest of the party filing the request and the reasons why a hearing is warranted. A hearing will be held if there is a significant public interest, including the filing of requests or petitions for the hearing.

(c) Upon issuance of a general permit, the Department will place a notice in the *Pennsylvania Bulletin* of the availability of the general permit. The notice of availability will indicate one of the following:

(1) An NOI is not required for coverage under the general permit.

(2) A notice will be published in the *Pennsylvania Bulletin* of each NOI under an applicable general permit, and of each approval for coverage under a general permit.

(3) A notice will be published in the *Pennsylvania Bulletin* of every approval of coverage only.

§ 92a.85. Notice to other government agencies.

(a) The provisions of 40 CFR 124.59 (relating to conditions requested by the Corps of Engineers and other government agencies) are incorporated by reference.

(b) The Department will do the following:

(1) Provide a subscription to the *Pennsylvania Bulletin* for any other states whose waters may be affected by the issuance of an NPDES permit, to any interstate agency having water quality control authority over water that may be affected by the issuance of an NPDES permit, and to all Pennsylvania District Engineers of the Army Corps of Engineers.

(2) At the time of issuance of public notice under § 92a.82 (relating to public notice of permit applications and draft permits), transmit to other states, whose waters may be affected by the issuance of an NPDES permit, a copy of fact sheets prepared under § 92a.53 (relating to documentation of permit conditions). Upon request, the Department will provide the states with a copy of the application and a copy of the draft permit. Each affected state will be afforded an opportunity to submit written recommendations to the Department and the Administrator. The Department will consider these comments during preparation of the permit decision. If the Department decides not to incorporate any written recommendations

thus received, it will provide a written explanation of its reasons for deciding not to accept any of the written recommendations.

(3) At the time of issuance of public notice under § 92a.82, transmit to any interstate agency having water quality control authority over waters that may be affected by the issuance of a permit a copy of fact sheets prepared under § 92a.53. Upon request, the Department will provide the interstate agency with a copy of the application and a copy of the draft permit. The interstate agency shall have the same opportunity to submit recommendations and to receive explanations in paragraph (2).

§ 92a.87. Notice of reissuance of permits.

Notice of reissuance of permits will be accomplished as specified in §§ 92a.81—92a.83, 92a.85 and 92a.86 for any draft individual permit.

[Pa.B. Doc. No. 10-1926. Filed for public inspection October 8, 2010, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 96]

Water Quality Standards Implementation

The Environmental Quality Board (Board) amends Chapter 96 (relating to water quality standards implementation) to read as set forth in Annex A. The final-form rulemaking codifies, with some revisions, the Department's existing guidance entitled "Final Trading of Nutrient and Sediment Reduction Credits—Policy and Guidelines" (No. 392-0900-001, December 2006) as it relates to the Chesapeake Bay (Nutrient Credit Trading Policy). The Nutrient Credit Trading Policy provides a cost-effective means for facilities subject to meet limits for nitrogen, phosphorus and sediment to meet those limits by working with other facilities or with nonpoint sources, or both. The Nutrient Trading Program helps the Commonwealth achieve its Chesapeake Bay nutrient reduction goals from the agriculture sector and provides a source of revenue to farmers and other property owners while advancing the restoration and protection of the water quality of the Chesapeake Bay.

This order was adopted by the Board at its meeting on July 13, 2010.

A. Effective Date

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

B. Contact Persons

For further information, contact Ann Roda, Program Analyst, Water Planning Office, P. O. Box 2063, Rachel Carson State Office Building, Harrisburg, PA 17105-2063, (717) 772-4785; or Kristen Furlan, 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 (<http://www.dep.state.pa.us>).

C. Statutory Authority

The final-form rulemaking is being made under the authority of section 5(b) of The Clean Streams Law (35

P. S. § 691.5(b)), which provides for the adoption of regulations necessary for implementation of The Clean Streams Law (35 P. S. §§ 691.1—691.1001); sections 202, 307 and 402 of The Clean Streams Law (35 P. S. §§ 691.202, 691.307 and 691.402), which authorize the Department to establish requirements related to pollution and potential pollution; and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20(b)), which authorizes the Board to promulgate rules and regulations as may be determined by the Board for the proper performance of the work of the Department.

D. Background and Purpose

The Chesapeake Bay is polluted from nutrients and sediment and in 2005 water quality standards under the Federal Clean Water Act (33 U.S.C.A. §§ 1251—1387) to address this pollution came into effect. To meet these requirements under the Federal Clean Water Act, the United States Environmental Protection Agency (EPA) and the affected states developed a maximum nutrient load, or "cap load," for each major tributary. As a result, approximately 200 municipal sewage treatment plants and others discharging nutrients to this Commonwealth's Bay tributaries must cap those discharges or they will be in violation of the downstream water quality standards, under Federal and State law.

In January 2006, the Department initiated an intensive stakeholder process regarding these legal requirements. First, it refocused and expanded the standing Chesapeake Bay Advisory Committee of the Department to include local government associations, the agricultural community and multiple associations. The Chesapeake Bay Advisory Committee was tasked with discussing the wide variety of issues surrounding the Commonwealth's compliance strategy and to consider various approaches to meeting the Federally driven water quality obligations.

After receiving input through a series of meetings held over a 9-month period, the Department developed a revised plan to address the legal mandate. The plan included permitting requirements for sewage treatment plants and other "point sources" governed by the Federal National Pollutant Discharge Elimination System (NPDES) regulations controlling agricultural run-off and the Nutrient Credit Trading Policy.

The Nutrient Credit Trading Policy was one of several compliance alternatives provided to NPDES permittees required to reduce their effluent discharges under the Department's plan. The other compliance alternatives identified for NPDES permittees were as follows: implementation of nutrient reduction treatment technology; retirement of existing onlot septic systems; wastewater reuse; and land application. Nutrient trading provides those sewage treatment plants with options that have the potential to reduce compliance costs substantially. For example, in 2008, Fairview Township decided to use credits to meet its nutrient reduction obligation and in so doing announced a cost savings of approximately 75%. The Mount Joy Borough Authority investigated costs of upgrading and found that by installing the first level of nitrogen treatment they could reduce nitrogen by about 50% for about \$8 per pound. However, to reach their cap loads, an additional upgrade would increase the price to about \$12 per pound. Instead, the Mount Joy Borough Authority contracted with a local farmer and invested in more than 900 acres of no-till agriculture to meet their permit cap at a cost of only \$3.81 for every pound reduced.

Another important example is the Harrisburg Authority. The Harrisburg Authority underwent a public bidding

process, the first of its kind, to help it incorporate nutrient credits into its compliance plan for meeting nitrogen and phosphorous limits. The Harrisburg Authority used the bids to help estimate design and construction costs to compare the costs of three different approaches for compliance: one that completely relied on treatment plant upgrades; one that completely relied on nutrient trading; and one that combined trading with construction. Working with its consultant, the Harrisburg Authority determined that the lowest cost of compliance would be a combination of trading and construction. By purchasing nutrient credits, the Harrisburg Authority estimates that it will save \$28 million over the next 20 years, which will save ratepayers an estimated \$48 per year on sewer service charges.

The Department's nutrient credit trading program is built upon the core elements prescribed for a valid trading program. For example, credits can only be generated for nutrient reductions above and beyond those required for regulatory compliance. There are also caps on the total tradable credits for "nonpoint sources" at the excess level available in the watershed from best management practices (BMPs) beyond those needed to meet compliance goals.

Since the publication of the interim final policy and as of May 2010, the Department has received 89 proposals that have been submitted for review to generate nutrient reduction credits in the Chesapeake Bay watershed, mostly but not exclusively by farmers. Of those, 59 have been approved for a total of 2,999,765 nitrogen credits and 249,543 phosphorous credits. There have also been eight contracts entered into for the use of credits toward permit compliance.

The Department and its partners continue to seek enhancements to the Department's nutrient trading program. For example, the Pennsylvania Infrastructure Investment Authority (PENNVEST) has been authorized by the EPA as well as by the PENNVEST Board to invest up to \$50 million to facilitate the nutrient credit trading program. PENNVEST is also preparing to provide an exchange role to facilitate the use of credits by sewage treatment plants. Further, the Department regularly meets with stakeholders to improve the trading program.

The Department consulted with a number of boards and committees throughout the process of developing the Nutrient Credit Trading Policy, the proposed rulemaking and this final-form rulemaking. The Department presented a summary of comments received on the proposed rulemaking to the Water Resources Advisory Committee (WRAC) on April 14, 2010, and then presented the final-form rulemaking to the WRAC on May 11, 2010. At that meeting, the WRAC endorsed the final-form rulemaking. The Department presented a summary of comments received on the proposed rulemaking to the Agricultural Advisory Board (AAB) on April 21, 2010. The AAB raised few comments or concerns.

The EPA supports credit trading generally, having published a National policy in that regard in 2003, and a detailed NPDES permit writer's manual on the subject in 2007. The Department conferred with the EPA on this program for the past several years and the EPA agrees with the approach. There are no Federal regulations for nutrient credit trading, although there are several air quality-related trading programs administered by the EPA and other states, including the Commonwealth.

The Commonwealth has been leading the way Nationally in developing its nutrient trading program and it is

one of the first programs in the country to have both nonpoint sources and point sources utilizing a nutrient credit trading program. Harnessing market forces can be an effective way to achieve environmental regulatory goals at less expense than traditional command and control regulations. Market-based programs such as trading provide incentives for entities to create credits by going beyond statutory or regulatory obligations.

This final-form rulemaking will provide clear and certain standards for nutrient credit trading in this Commonwealth and thereby support the Department's efforts to implement its nutrient credit trading program. To ensure the continued effectiveness of the nutrient credit trading program and to meet new Federal or Commonwealth requirements, the Department will periodically review the nutrient trading program and recommend modifications that may be advisable.

E. Summary of Regulatory Requirements and Major Changes to the Proposed Rulemaking

Subsection (a)—Definitions

The final-form rulemaking adds a number of definitions to clarify various new terms. Most of the definitions were taken from the Nutrient Credit Trading Policy, with revision in some cases based on the Department's experience in implementing the program since the Nutrient Credit Trading Policy was finalized and also based on public comments and comments from stakeholders. Some of the definition revisions are intended solely for clarification or style.

There are several substantive changes to definitions from the proposed rulemaking. The Department added a subparagraph to the definition of "BMP—Best management practice" to conform to the definitions in Chapter 102 (relating to erosion and sediment control). The Department retained the four existing subparagraphs to ensure adequate flexibility for point and nonpoint source pollutant reduction activities.

The Department revised the definition of "DMR—Discharge monitoring report" to adopt the definition of the term as it is stated in the concurrent final-form rulemaking replacing Chapter 92 with Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance).

The Department removed references to "offsets" from the definitions of "certification," "registration," "threshold," "trading ratio" and "verification" as offsets do not get certified, verified and registered and may not be traded under the final-form rulemaking. Deletion of the word "offset" is made throughout the final-form rulemaking, where applicable, for the same reason.

The final-form rulemaking amends the definition of "edge of segment ratio" by deleting "land-applied" because land application is not a necessary prerequisite to the use of the edge of segment (EOS) ratio. The final-form rulemaking also deletes "nonpoint" from the definition because the EOS ratio may also be employed when calculating credits generated by point sources.

The final-form rulemaking amends the definition of "offset" to conform better to the definition in the NPDES permit and the one used in a Department implementation guideline, namely its *Chesapeake Bay Tributary Strategy Implementation Plan for Sewage Facilities Planning*, dated April 24, 2007.

The final-form rulemaking adds a definition of "pollutant reduction activity" because the term is used throughout the final-form rulemaking. The definition was created

for this final-form rulemaking and applies to activities by both point and nonpoint sources.

The final-form rulemaking expressly defines the “reserve ratio” as “10%.” This number was included to ensure the regulated community that the reserve ratio will be consistent among persons receiving certifications.

The final-form rulemaking clarifies in the definition of “threshold” that the activities and performance standards required beyond baseline compliance are specified in subsection (d)(3).

The final-form rulemaking clarifies the definition of “tradable load” by indicating that it applies to an amount of nonpoint source pollutant reductions. This term is defined to ensure that reductions needed by nonpoint sources to meet the Commonwealth’s Chesapeake Bay Tributary Strategy (Tributary Strategy) will not be traded away.

The final-form rulemaking amends the definition of “verification” to cover situations in which a technology, rather than a practice, will be used to generate credits. Sometimes for these projects, the verification plan will be in a permit or other Department approval needed for the project.

Subsections (b), (i) and (k)—General provisions

The final-form rulemaking contains several subsections with overarching provisions. Subsection (b) sets forth the core concepts and basic requirements of the trading program. Subsection (i) contains provisions regarding the interaction of § 96.8 and important provisions elsewhere in 25 Pa. Code (relating to environmental protection) regarding protection of water quality. Subsection (k) makes it clear that this final-form rulemaking is not intended to limit the Department’s existing authority to allow the use of credits or offsets in other contexts.

Subsection (c)—Methodology for calculating credits and offsets

Much of the methodology for establishing the water quality standards for the Chesapeake Bay, and determining effectiveness of various activities to meet those standards, is based on scientific work done by the EPA. This includes the use of several complex models and the scientific research related to them. Subsection (c) identifies those models and the research and establishes them as a basis for the Department’s decisions regarding, among other things, the amount of reductions (and therefore credits) to assign to a given pollutant reduction activity. These models and the related research are an ongoing effort and the language of this subsection allows for the use of the most up-to-date versions of the models and most current research. Changes from the proposed rulemaking in this subsection are designed to add certainty, clarity and transparency.

An important provision in this subsection is paragraph (2), which allows the person seeking certification to use pollutant removal efficiencies, EOS ratios and delivery ratios that are consistent with the most up-to-date version of the Chesapeake Bay Watershed Model (the version at the time of writing this preamble is Version 4.3) in calculating credits. The removal efficiencies represent average nutrient and sediment reduction performance capabilities for various BMPs. They undergo extensive peer review by a technical review team managed by the EPA Chesapeake Bay Program. Recommendations are then reviewed by the EPA Chesapeake Bay Program committee and subcommittee process. These efficiencies change with the science of the models and related

research. The final-form rulemaking states that the pollutant removal efficiencies and EOS and delivery ratios will be available on the Department’s Nutrient Credit Trading web site: <http://www.dep.state.pa.us>, Keyword: “Nutrient Trading.”

The EOS and delivery ratios are used to identify the fate and transport of nutrients and sediment from their initial creation at a certain location to the Bay. For example, a pound of nitrogen reduced in the upper reaches of the Susquehanna has much less impact than a pound reduced near the border with Maryland. The delivery ratio accounts for that difference.

Subsection (d)—Eligibility requirements

This subsection describes the various requirements for a source to be able to generate credits for use under the final-form rulemaking. There are two components. First, the generator shall meet “baseline” requirements, which essentially are the legal requirements that apply to that operation. For a nonpoint source, these are the legal requirements and pollutant load associated with the location applicable on January 1, 2005, or later.

The second requirement is “threshold.” This requirement is defined as either a 100-foot manure set back, a 35-foot vegetative buffer or a 20% adjustment made to the overall reduction. It provides an added level of nutrient and sediment reduction that would not necessarily be accomplished without the financial incentives of trading. Threshold, therefore, adds to the nutrient reduction benefits for the Bay, especially from the agriculture sector.

Therefore, only after demonstrating compliance with the applicable legal requirements (baseline) and achieving an additional set of pollutant reductions (threshold) can a person begin to generate credits under the final-form rulemaking. The Department received numerous proposals for the generation of credits that achieve these requirements and has approved many of them.

Subsection (d) also addresses a person’s compliance status as a consideration in the Department’s certification decision. In the final-form rulemaking, the Department narrowed subsection (d)(4) to apply when past or current noncompliance indicates a lack of ability or intention to comply with the stated items. The Department does not intend to let minor infractions exclude a person from engaging in trading.

Subsections (e), (f) and (g)—Certification, verification and registration

These subsections describe the procedural requirement that the Department has in place to ensure that credits are calculated correctly and accomplish pollutant reductions.

The first step is “certification,” which is typically done in advance of pollutant reduction activities. In reviewing certification requests, the Department evaluates detailed requests for approval of a pollutant reduction activity for the purpose of certifying that activity as being capable of generating credits. A person may want to have a proposed pollutant reduction activity certified to obtain from the Department the number of credits that can be expected, prior to completing the activity.

Calculation of the number of credits a certified pollutant reduction activity may generate will include appropriate adjustments such as the reserve and delivery ratios, with particular attention being paid to the requirements of subsection (c), regarding methodology. The result is a letter from the Department indicating the pollutant reduction activity being certified and the amount of credits

that may be generated. The person can use the certification to market the anticipated credits. The Department's certification decision is a final action.

Certification requirements have been clarified in the final-form rulemaking to explain elements of the calculation for a point source generating credits and to explain, consistent with the definition of "reserve ratio," that a credit calculation for a point or nonpoint source must include a 10% set aside for the Department's credit reserve.

Certification requirements also include a restriction on certification of requests that include a pollutant reduction activity regarding farmland conversion. This is described more fully in Part F of this preamble.

A paragraph has been added to subsection (e) to affirm that a person to whom the Department issues a certification under § 96.8 shall comply with the terms and conditions of the certification. Failure to comply will expose the person to available remedies, including the remedies available under The Clean Streams Law. Provisions have also been added to subsection (e) to specify a typical certification term of 5 years, to describe the process for renewal of a certification and to provide for revocation of a certification in the event of failure to comply with conditions of a certification.

A second important procedural requirement and a key component of the certification decision is a review of the "verification" plan. This plan is required by subsection (e)(5). This paragraph has been amended to clarify that one of the two methods listed for verification must be selected, namely self-verification (which can include submission of DMRs by a point source) and third-party verification.

The verification process, itself, has been moved to subsection (f), regarding verification requirements for the Chesapeake Bay. Verification is a condition of "registration," the final step, under subsection (f)(1). Verification can take a number of forms, but it must demonstrate that the pollutant reduction activity was implemented as described in the certification. The Department may also conduct other verification activities, in addition to those in the plan submitted under subsection (f)(2).

The final procedural step in these subsections is "registration," under subsection (g). This is the Department's accounting mechanism to track verified credits before they are used to comply with the NPDES permit effluent limits for the Bay.

Under subsection (g)(3), the Department will not register credits for persons who demonstrate a lack of ability or intention to comply with the requirements of § 96.8, Department regulations or other relevant requirements. See also subsection (d)(4) and (6).

Subsection (h)—Use of credits and offsets

This subsection addresses the obligations of persons who use credits and offsets to meet permit requirements. This underscores that the use of credits and offsets only applies to the nutrient and sediment effluent limits in NPDES permits for the purposes of restoration and protection of the water quality of the Chesapeake Bay. See subsection (h)(1) and (2). This language is not intended to limit the Department's existing authority to allow the use of credits or offsets in other contexts. See subsection (k).

Credit and offset failure is addressed in subsection (h)(5). There are several factors that come into play with this issue. First, it is important that credits and offsets

generate real reduction in pollutant loads delivered to the Bay. In addition, the one sector most likely to purchase credits, sewage treatment plant operators, has expressed concern over purchasing credits and then later being subject to enforcement action by the Department if the credits are not accepted due to credit failure. This subsection seeks to address both concerns while reminding facility operators of their obligation to meet permit effluent limitations, conditions and stipulations.

Two key components of this subsection are "the Department determines that replacement credits will be available" and "the existence of an approved legal mechanism that is enforceable by the Department." An example is the use of the credit reserve.

Subsection (i)—Water quality and Total Maximum Daily Loads (TMDLs)

This subsection is aimed at protecting and restoring the water quality of the Chesapeake Bay. However, there may be local water quality issues that can affect a decision on a credit or offset proposal. This would be most likely if the receiving waterbody at the location where the credits or offsets will be generated is listed as "impaired" through the Department's formal listing process under The Clean Water Act. There are also local antidegradation requirements that are part of the Commonwealth's water quality regulations. This subsection makes it clear that those and other existing regulatory requirements take precedence over any decisions made under this final-form rulemaking.

Subsection (j)—Public participation

The Department is committed to a transparent process in the implementation of its trading program. Therefore, the final-form rulemaking codifies the current process of publishing notice in the *Pennsylvania Bulletin* whenever: (1) a credit proposal is submitted and is administratively complete; and (2) the Department makes a final decision on certification.

Subsection (k)—Use of credits and offsets generally

While this final-form rulemaking only authorizes trading to meet the nutrient and sediment cap loads for the Chesapeake Bay, it is not intended to foreclose the use of credits or offsets in other contexts.

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

The Board approved publication of the proposed rulemaking at its meeting of November 17, 2009. The proposed rulemaking was published at 40 Pa.B. 876 (February 13, 2010) with a 30-day public comment period. The public comment period closed on March 15, 2010.

A number of commentators pointed out concerns with the terms "offset" and "credit," suggesting, among other things, that they be addressed separately and that offsets not be subject to the certification, verification and registration processes in the proposed rulemaking. In response, the Department made a number of revisions to the final-form rulemaking to address the concerns raised by the commentators. Specifically, the definition of "offset" has been revised to more accurately reflect the use of the term and to match more closely the permit definition. The term was also removed from many sections of the final-form rulemaking, which was clarified so that offsets are approved rather than being treated the same as credits.

Several commentators requested that the definition of "baseline," and also the point source baseline requirements in subsection (d), be revised so as not to prevent

sources from generating Bay-related credits if a local TMDL limit results in greater reductions than those needed to comply with Bay annual cap loads. Several commentators stated that more guidance is needed on how a TMDL may affect baseline and that it was not clear if a participant needed to meet the TMDL requirements before they could be considered in baseline or if they only needed to meet their State regulatory requirements for baseline before they start trading. In addition, one commentator thought the term “similar allocation” in subparagraph (ii) of this definition and subsection (d)(2)(ii) was unclear. That commentator recommended that the Department work with stakeholders to address these concerns and use greater detail in setting forth its intent in the final-form rulemaking. Similar comments were received regarding proposed subsection (h). Changes were not made to the final-form rulemaking. In the 2003 “Water Quality Trading Policy Statement,” the EPA outlined that baselines for generating credits should be derived from and be consistent with water quality standards. The policy states that when a TMDL has been approved or established by the EPA the applicable point source waste load allocation or nonpoint source load allocation would establish the baseline for generating credits. The final-form rulemaking is consistent with this EPA guidance and provides consistency across sectors.

Two commentators requested that “liquidity in the market” be removed from the definition of “credit reserve.” The Department made this change.

One commentator stated that the definition of “credit” should reflect how a delivery ratio, when applied to a point source cap load, determines how many credits are needed. A change has not been made to the final-form rulemaking. The authorizing language in NPDES permits will contain the conditions by which credits may be applied toward compliance with point source cap loads.

Several comments sought clarification on the meaning of the term “defined compliance point” in the definition of “delivery ratio.” The Department responds that a compliance point is typically defined in a TMDL.

One commentator requested clarification on the definition of “DMR—Discharge monitoring report” in light of the fact that in § 92.1 a discharge monitoring report (DMR) is the same as an NPDES reporting form. Clarification has been added by adopting the definition of the term as it is stated in the concurrent rulemaking replacing Chapter 92 with Chapter 92a.

Several commentators stated that it was unclear how the EOS ratio reflects pollutant contributions associated with groundwater flows and asked if the ratio really reflects pollutant contributions associated with groundwater flows. The comments requested clarification to address the comparison between the relatively short amount of time it takes for surface runoff of pollutants into streams, saying it should take considerably longer for groundwater contributions to occur in those same streams. The Department responds that the EOS ratios were developed by dividing the amount of nutrients coming from the model segment (the EOS loads) by the total amount of nutrients applied to the land within the segment (the input loads). The total nitrogen inputs are first adjusted to subtract out the amount of nitrogen that would be removed by crop uptake.

Several commentators questioned the use of the EOS factor on a specific farm field, since the EOS was not developed for site specifics, but rather larger watershed segments. The Department responds that the EOS factor

is the best science that is currently available to make this correlation. As the science and values evolve, the Department will make additions to the quantification and application of the ratio.

Two commentators suggested that the credit reserve of 10% should be set in the regulation to add certainty to the final-form rulemaking. The Department made this revision in the definition of “reserve ratio.”

One commentator questioned what criteria and process will be used by the Department in determining what is “reasonably attainable” in the definition of “tradable load.” The Department retained this language in the final-form rulemaking, as flexibility is needed. During program development, the Commonwealth recognized that the Chesapeake Bay Watershed model estimates were based on the assumption that everyone who can reduce nutrients and sediment will do so to the maximum extent. This is commonly referred to as the “everything, everywhere, by everybody” (E3) scenario. Since the E3 scenario likely overestimated the maximum feasible nutrient and sediment load reductions, the Commonwealth made adjustments to the estimates to better represent a feasible effort. The Commonwealth reduced nonpoint source reductions in E3 by 10% and estimated the reductions for those BMPs in the Tributary Strategy that were not included in the E3 scenario. After adjusting the E3 scenario estimates, the Commonwealth estimated the maximum allowable credits as the difference between the load estimates from the revised E3 scenario and the Tributary Strategy loadings goal. The scenario values and the tradable load values will change as new BMPs are developed or the efficiencies of existing BMPs are revised. The Department notes that the modifier “reasonable” is found in other environmental regulations, as well when the exercise of judgment and flexibility are similarly appropriate.

Two commentators suggested that offsets should not be mentioned in the definition of “threshold” and that the definition of “tradable load” should somehow incorporate the term “threshold.” It was also stated that the term “reasonably attainable” in the definition of “tradable load” is ambiguous and open-ended. The term “offset” has been removed from the definition of “threshold.” Additionally, when the tradable load was developed, it did not include reductions associated with threshold so it would be inappropriate to add “threshold” to the definition. Information on how the tradable load was developed can be found on the Department’s Nutrient Trading web site. Changes have not been made regarding the term “reasonably attainable.” The Department will need flexibility regarding the information generated by TMDL models and water quality standards and it is not possible to have a more accurate terminology.

One commentator suggested that it was unclear what is meant by “water quality” or what would be included in “other considerations” as set forth in the definition of “trading ratios.” The commentator stated that if the Department intends to impose a trading ratio, reserve or other reduction on the sale of credits from a point source seller to a point source buyer, then the regulation should set forth specific amounts. The Department responds that much of the definition of the term “trading ratio” is taken from the EPA’s 2003 “Water Quality Trading Policy Statement.” The phrases “water quality” and “other considerations” are used in the definition of “trading ratios” because when calculating the reductions, trading ratios need to be considered and used as appropriate to help ensure the trade provides the desired level of nutrient

reductions and water quality benefits. Point source credits are calculated based on reductions to the Chesapeake Bay and will include the application of the delivery ratio and reserve ratio. This information on the applicable trading ratios for calculating credits is readily available on the Department's Nutrient Trading web site. The authorizing language in NPDES permits will contain the conditions by which credits may be applied toward compliance and will address what ratios may be used by a permittee when credits are applied toward permit compliance.

Several commentators stated that there is ambiguity in how the Department will have the ability to readjust BMP reduction efficiencies, thresholds and delivery ratios. The comments stated that to maintain confidence and stability in the trading program, it must be stated clearly in the regulation that once credits are verified, registered and sold, the number of credits is guaranteed for the current or future years for which they are purchased and cannot be reduced based on further review of how they were originally determined. The Department responds that flexibility in the BMP efficiencies and in the EOS and delivery ratios is needed to ensure the actions undertaken within the program reflect the water quality standards downstream. The Chesapeake Bay model is ever evolving to accurately measure and model the progress that is made in reaching a restored Bay. To balance this flexibility, the Department added section subsection (e)(8), which outlines that a pollutant reduction activity will generally be certified for a duration of 5 years.

One commentator stated that the proposed rulemaking failed to establish objective standards. A major concern is that the regulated community is not apprised of the specific criteria that the Department will use, such as the following: the specific reserve factor, if any, that would apply to point source trades; how trades will be calculated based upon the deliverable loads of the seller; and how trades will be calculated based upon the deliverable loads of the purchaser. The final-form rulemaking should identify the underlying criteria for how trades can occur. The Department responds that the final-form rulemaking identifies how credits and offsets may be used in the Chesapeake Bay Watershed. Subsection (h) refers to the use of credits to meet NPDES permit requirements. Credits are calculated based on what is delivered to the Chesapeake Bay. The authorizing language in NPDES permits will contain the conditions by which credits may be applied toward compliance, which will address delivered loads. The Department provided clarification in the definition of "reserve ratio" that it will be 10%. The final-form rulemaking states that information on the delivery and EOS ratios will be available on the Department's Nutrient Trading web site.

One commentator stated that the rules governing the trading market must be consistent and predictable to encourage investment and participation and that, therefore, the Board and the Department need to work with stakeholders to develop greater specificity in the criteria, procedures and standards in the final-form rulemaking. The Department worked with stakeholders to develop the final-form rulemaking and added greater specificity to it. The Department added clarity by identifying where ratios and efficiencies can be found, clarifying the three-step process regarding certification, verification and registration, providing a time frame for certification and clarifying permittee responsibility.

A commentator requested more transparency regarding information the Department uses in calculating credits

and offsets. The Department responds that this information will be readily available on the Department's Nutrient Trading web site.

One commentator asked that the final-form rulemaking address timetables and notification requirements regarding eligibility determinations, credit certifications, verifications or other types of decisions to be made by the Department to increase predictability. In the final-form rulemaking, eligibility determinations will be made as part of the credit certification action. Consistent with current practice, the Department will attempt to issue decisions on certification within 60 days of receipt of a complete proposal. This time period will also include a 30-day period for informal comments from the public. The final-form rulemaking does not include a time period because projects vary widely in scope, some requiring significantly more review. In addition to maintaining communication with submitters during the Department's review, the Department will publish notice in the *Pennsylvania Bulletin* when it makes a final certification decision, under subsection (j). The Department's web site and on-line trading platform, which is called NutrientNet, will contain information about certified projects as well as market pricing.

One commentator expressed concern about being able to appeal if credits are not registered and to be able to use credits in a later water year. The Department responds that the final-form rulemaking does not include an appeal process, as it is not necessary and the Department does not typically set forth appeal processes in its regulations. For the nutrient trading program, the Department's certification action (approval or denial) is a final action of the Department that is intended to be appealable.

Comments were submitted in support of, and questioning, the use of "delivery ratios" to calculate credits. Some commentators also thought that a delivery ratio should not be applied to credits generated by a point source. The Department responds that credits are calculated based on what is delivered to the Chesapeake Bay and will include the application of the reserve ratio. The authorizing language in NPDES permits will contain the conditions by which credits may be applied towards compliance. The permit conditions will address the issue raised regarding delivered loads.

Several comments were submitted regarding clarification on how the proposed rulemaking affects point source to point source trades. One commentator believed that point source to point source credits should be certified as pound for pound without the 10% reserve ratio or with a less restrictive reserve ratio. These commentators also felt that point source credits should not be subject to the reserve ratio because there is a certainty that the credits were actually generated by virtue of certification on the DMR by the permittee. One commentator stated that the final-form rulemaking should be clarified to indicate that pollution reduction failures and uncertainty are generally associated with nonpoint source projects. The Department has not made these changes. The credit reserve is intended to provide an insurance pool of credits in times of need and it will be populated by a 10% reserve ratio applied across the board.

One commentator suggested that point sources should not have to wait until the end of the water year to receive certification and verification, as verification can be done through DMRs. One commentator suggested that a signed DMR should replace the certification and verification process for point sources. The final-form rulemaking has

been revised to clarify that a point source may obtain certification of a pollutant reduction activity prior to the end of the compliance year, the definition of “DMR—Discharge monitoring report” has been expanded, “pollutant reduction activity” has been defined and includes “effluent control,” subsection (c)(5) has been revised regarding the use of DMR and offset information as an acceptable methodology and subsection (e)(3)(iv) has been added for calculating reductions generated by a point source. As outlined in subsection (e)(5)(ii)(A), the verification plan can be self verification, which can include the signed DMR.

One commentator requested a mechanism to transfer the long-term responsibility for ensuring that nutrient credits are in place to offset the pollution loads generated by a new development from the builder or developer to a third party once a project is completed. The Department responds as follows. The Department has not made revisions to the final-form rulemaking to include this mechanism because the mechanism that the commentator seeks is related to Act 537 planning and guidance is available in the Department’s “Implementation Plan for Sewage Facilities Planning” document. Specifically, the Act 537 planning submission must include assurances that will be provided to guarantee the long-term operation, maintenance and compliance of the treatment facility in accordance with 25 Pa. Code §§ 71.65, 71.71 and 71.72 (relating to individual and community sewerage systems; general requirements; and sewage management programs for Department permitted sewage facilities and community onlot systems). If a developer or municipality chooses to purchase credits for compliance they are only required to purchase credits sufficient to satisfy each NPDES permit cycle but they must have assurances in place, as they would for other permit obligations, to address long term operation and maintenance. A formal agreement between the municipality and a permittee that establishes the permittee’s responsibility for operating and maintaining the system in compliance with its permit by providing credits, and the responsibility of the municipality or local agency for oversight of the system, would normally be an acceptable assurance.

One commentator requested that the Department replace general references to other laws and regulations to the specific laws and regulations. The Department has not made these revisions to the final-form rulemaking since the applicable laws and regulations are dynamic. The approach in the final-form rulemaking is consistent with that in some environmental statutes, such as the Oil and Gas Act (58 P.S. §§ 601.101—601.605) and the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17).

One commentator recommended that a “stormwater BMP offset” option be developed as part of Chapter 102 and that the option may also have applicability to the nutrient credit trading program. Under a “stormwater BMP offset” program, the commentator suggested that builders, developers and other applicants would be permitted to fund offsite stream buffers or other BMP in return for offsets of certain postconstruction stormwater management BMP requirements. The commentator stated that applicants would still need to install erosion and sedimentation control measures, as well as stormwater facilities, to control the runoff rate to predevelopment conditions but would offset stormwater infiltration areas. The final-form rulemaking will allow the use of credits to meet permit effluent limits for pollutants (namely, nitrogen and phosphorus) and sediment. The recent amendments to Chapter 102 authorize trading and credits for

riparian buffers in the stormwater context. These Chapter 102 amendments are consistent with and would build upon this final-form rulemaking.

Two commentators suggested changes to the definition of “BMP—Best management practices.” The suggested revisions have not been made in the final-form rulemaking; however, subparagraph (iii) has been added to the definition of “BMP—Best Management Practice” to include the activities regarding stormwater. This added definition mirrors the BMP definition included in the recent amendments to the Chapter 102 final-form rulemaking.

Two commentators asked that the Department publish an advance notice of final rulemaking to allow an additional public comment period. The Department did not do this. During the drafting process of the proposed rulemaking, the Department solicited comments during a number of stakeholder meetings and the proposed rulemaking is based on *Nutrient and Sediment Reduction Credit Trading—Final Policy and Guidelines*, which involved two comment periods.

Commentators questioned referencing a specific version of the Chesapeake Bay model and other models and technical references in subsection (c) saying most of the references are already out of date. For the most part, the Department has not removed the references as they serve as background material to the Chesapeake Bay program and watershed model.

One commentator asked how the regulated community will know what other sources the Department may rely upon under subsection (c)(6), which includes the sentence “The Department may also rely on other published or peer-reviewed scientific sources.” The commentator asked whether the Department will publish a list in the *Pennsylvania Bulletin*. The Department will not publish a list of all published and peer reviewed scientific sources that may be available. Subsection (c)(6) provides flexibility to the regulated community in what methodology they propose to use for calculating reductions but the important component to the methodology is that it must fall within the outlined criteria.

One commentator asked for explicit regulatory language to prohibit changes in the credit calculation methods for certifications covering multiple years. The commentator stated that there needs to be certainty and predictability for both the sellers who are making investments in BMPs and buyers who are relying on those credits being available. Similarly, this commentator stated that subsection (e)(5)(ii) and (iii) creates a time line bottleneck in which many credits must be certified in the fall and early winter so that the entity implementing the BMPs can have an idea how many credits will be available for sale if he goes through the expense of implementing the BMPs in the spring. The Department added subsection (e)(8) to address the duration of credit certification. By the addition of subsection (e)(8), the Department does not feel a bottleneck will occur as the commentator expressed. The term of a certification will generally be 5 years, during which time the Department would not anticipate changing the terms of the certification. If, at the end of the 5-year period, the holder of the certification wishes to renew it, the certification may be renewed.

One commentator asked how a generator will know what the applicable threshold is. The Department has added certainty to the threshold provisions by removing

the words “by the Department” from subsection (d)(1). Applicable threshold requirements are in subsection (d)(3).

One commentator stated that the nonpoint source baseline requirements, while logical, could result in unintended consequences due to the details of compliance with current regulations. For example, in Chapter 83 (relating to State Conservation Commission) there is a wide range in management that can be used to meet the requirements of the chapter. A plan for a farm could be written with all surface application of manure or with all manure being injected; the commentator questioned which manure management activity would meet baseline compliance and stated that the answer has major implications for calculating credits. The commentator explained, for example, that if the plan for surface application is the baseline and is modified to all manure being injected then the management change could be used to generate credits but if the plan already calls for the injection of the manure this could not be used to generate credits. It was suggested by this comment and several others that in addition to simply requiring compliance with current regulations, additional criteria may be required, such as using the existing compliance management on a certain date as the baseline. These commentators stated that setting a specific date in the regulation the Department would ensure that operations do not go backward in management just to generate nutrient credits. The Department revised the final-form rulemaking to include January 1, 2005, as the date for baseline, unless a revision to baseline has been made since that date, in which case the revised requirements must be met. For example, in the recent amendments to Chapter 102, an agricultural operation may need to meet those requirements for baseline.

Two commentators suggested that a reference be added to the nonpoint source baseline provision that an operation must also meet in § 92.5a (relating to CAFOs), if applicable to their operation. This reference has been added to the final-form rulemaking and reflects the new numbering of this section as § 92a.29 (relating to CAFOs).

Two commentators suggested that additional information be included in subsection (d)(3)(i)(B) so that no applications of mechanically applied manure be allowed in the 35 feet of permanent vegetation between the field and surface water. These commentators recommended the use of language from Chapter 83, which is “There is no mechanical application of manure within the buffer area.” The Department revised the final-form rulemaking to include this language.

Several commentators felt the threshold provisions contained too much flexibility. One commentator asked whether the “other requirements” will be promulgated as regulations and, if not, how generators will know what they are. The commentator expressed concern about enforceability if the requirements are not set out in the regulations. The commentator expressed similar concerns for subsection (d)(5), regarding other eligibility requirements, and subsection (e)(3)(v), regarding calculation requirements. The Department responds that flexibility in this final-form rulemaking is needed to ensure the actions undertaken within the program reflect the water quality standards downstream and reflect changes regarding the protection and restoration of the Chesapeake Bay. The Department will establish requirements in the most prudent manner available under the circumstances, taking into account many factors. By way of example, if the

EPA establishes a TMDL that necessitates a quick determination by the Department, then the Department will likely post notice on its Nutrient Trading web site and make case-by-case determinations until a regulatory amendment, if necessary, is adopted.

Several commentators questioned the “compliance status” provision in subsection (d)(4), saying it is too broad and should be eliminated. The Department responds that it has narrowed subsection (d)(4) to apply when past or current noncompliance indicates a lack of ability or intention to comply with the stated items. The Department does not intend to let minor infractions exclude a person from engaging in trading.

One commentator asked what the appeal process is for someone under subsection (d)(6) and suggested it should be cross-referenced or set forth in the final-form rulemaking. The Department responds that the final-form rulemaking does not include an appeal process, as it is not necessary and the Department does not typically set forth appeal processes in its regulations.

One commentator suggested that the regulation address the issue of eligibility for generation of nutrient credits as a result of idling of whole farms or substantial portions of farms and that the regulation should expressly prohibit the ability of nutrient credits to be generated and utilized in a manner that facilitates the idling and nonfarm development of farmland. The commentator also expressed concern with respect to the ability of nutrient credits to be generated through manipulation of Federal conservation programs to finance long-term land-banking of farms for future nonfarm development. The Department incorporated the requested protections into subsection (e).

One commentator suggested that the Department should make clear that projects already certified do not need to be recertified under the new standards and that the new regulation should only apply prospectively to new projects. The Department added subsection (e)(9)(iv) to address this comment. If a proposal has been certified and the certification does not contain an expiration date, the recipient of the certification must submit a request for renewal by April 13, 2015. At that point, the certification, if renewed, will be updated to meet the requirements in § 96.8 and other applicable laws, water quality standards and requirements in effect at that time.

Subsection (e)(2)(i)(D) states the “implementation of the pollutant reduction activity must be verified to the extent acceptable to the Department. . . .” The commentator asked what “the extent acceptable” to the Department means. The commentator wrote that there is a reference to paragraph (4) and the “verification plan” but that it is unclear how the “extent acceptable” is identified. The commentator added that paragraph (2)(i)(D) appears to be unnecessary since verification is covered in paragraph (4). The Department responds that the phrase “to the extent acceptable to the Department” has been deleted. Paragraph (2)(i)(D) remains in the final-form rulemaking as a useful reference point.

One commentator suggested that subsection (e)(2)(ii)(E) should require only that information on any source of “public or governmental” funding be provided. The commentator sought clarification on the terms “financial guarantee mechanisms,” “contractual arrangements” and “insurance products” in subsection (e)(2)(ii)(F). The Department has not made these revisions. Information on all sources of funding is useful to help the Department assure the viability of a proposed credit generation opera-

tion. The questioned terms are used as an example of ways that a person may outline how failure of the pollutant reduction activity will be managed. For example, a person may provide an explanation that they have contracts with multiple farms but only half of those farms are submitted for certification and, if needed, the remainder could be used to address nutrient reduction failure. Another example would be an explanation of the performance guarantee that is provided by the product manufacture.

Several commentators wondered if it is appropriate or necessary to include actual numbers for the tradable load, as had been proposed in subsection (e)(3)(vi). One comment suggested that the Department should provide public information on the genesis of the numbers. One comment stated the section should include the fact that tradable load for the Chesapeake Bay Watershed is for the portion of the watershed in this Commonwealth. It was suggested that the numbers be deleted to allow the Department to periodically reevaluate tradable load without subsequent amendments to the regulation. The Department revised this subsection, renumbered as subsection (e)(4)(i). The revisions include the removal of the specific tradable load amount, clarification that the tradable load is for the portion of the Chesapeake Bay Watershed in this Commonwealth and assurance that the specific loading can be found on the Department's Nutrient Trading web site.

One commentator questioned the phrase "...unless otherwise revised by the Department" in subsection (e)(3)(vi), which sets forth the level at which the sum of all credits may not exceed. The Department responds that the phrase "...unless otherwise revised by the Department" has been deleted from the final-form rulemaking.

Several commentators suggested that subsection (e)(3)(vii), regarding cost-sharing, should add some clarifying statement that the credits may be available "to the applicant" for certification, if the funding source provider allows. A commentator stated that this subsection should be struck because the Department should simply be following the rules established by the funding agency, not enforcing additional rules on the funding source. According to the commentator, such latitude on being able to approve or deny credits accrued from a BMP implementation project that was fully or partially subsidized by Federal funds limits the predictability for credit generation and thereby inhibits initiating nutrient trading activities and projects that would implement BMPs, reduce pollutant loads and generate nutrient credits through the use of Federal or State funds. The commentator is also concerned with how this provision may affect point source to point source trades. The Department responds that trading of cost-shared BMPs, when allowed by the grantor, encourages participation in BMP programs and remains constant with the goal of maximizing the rate of BMP implementation. Credits will only be restricted if the funding source restricts the use or ability of that funding to be used to generate marketable credits.

A commentator suggested that the regulation include a provision allowing a seller to use the credits in a subsequent water year when, due to no fault of the seller, the Department does not timely act upon the verification and certification. The commentator stated that protections can be built into this approach to assure that it will not result in more deliverable loads to the Chesapeake Bay than is otherwise provided for. The Department responds that, consistent with past practice and EPA guidance, the final-form rulemaking only allows credits generated by a

pollutant reduction activity to be used to meet permit effluent limits for the compliance period for which they are certified, verified and registered. Currently, a credit has a shelf life of 1 year, which means it can only be used for that year, though the activity that generated the reduction will be generally certified for 5 years.

A commentator questioned the reference to "basic contract elements" in proposed subsection (f)(2)(ii). The reference to "basic contract elements" has been removed from the final-form rulemaking.

Regarding proposed subsection (f)(2)(ii), several commentators questioned, based on the definition of "registration," why a contract needs to be in place to buy or sell credits prior to those credits being registered. These commentators questioned whether the requirement creates a predicament for credit generators who may not yet have a customer but have actually created credits. This subsection, final-form subsection (g)(2)(ii), still requires a valid contract that ensures that the requirements under § 96.8 will be met. This requirement will help ensure the integrity of the nutrient trading program. The requirement for a contract is also in the Department's Nutrient Trading guidance document.

Many comments were submitted regarding proposed subsection (g)(5). Many commentators stated that a broad exception needs to be included. It was suggested that if a permittee has purchased credits through a valid contract, and the credits later become unavailable through no fault of the permittee, then the permittee should not be penalized and should not risk enforcement action by the Department. One commentator said the expectations of the introductory sentence are unclear and asked what enforcement tools will be available to permittees. One commentator questioned if the permittee would still be responsible if PENNVEST becomes the nutrient credit clearinghouse.

The Department responds that this paragraph, now subsection (h)(5), is designed to offer protection to a permittee when credits are unavailable through no fault of the permittee. The Department made efforts to provide mechanisms for assistance and to help ensure that failure of credit availability in the market as a whole, during a major storm event, for instance, does not occur. The final-form rulemaking specifies that the Department will retain a 10% credit reserve, which will be set aside to address pollutant reduction failures and uncertainty. In addition, credit purchases through private aggregators or PENNVEST may help minimize risk. The Department is unable to extend the protection as far as the commentators requested, however, because the permittees are required by law to meet their effluent limits, regardless of the manner in which they have chosen to do so. A permittee can enforce the terms of its contract in the same manner that it can enforce any other contract; to some extent, this will be dependent upon the contract language. Similarly, if PENNVEST could not provide replacement credits, a permittee would still be responsible for meeting the terms of its permit. The Department's approach is consistent with the EPA's "Water Quality Trading Policy," dated January 13, 2002, which states the following: "In the event of default by another source generating credits, an NPDES permittee using those credits is responsible for complying with the effluent limitations that would apply if the trade had not occurred."

One commentator suggested that proposed subsection (h)(2) is vague and should be eliminated. This commentator also asked if discharges from New York going through

waterways in this Commonwealth impact facilities in this Commonwealth from the right to trade if New York is above its cap load. This commentator suggested that if this subsection means that trading will be based upon the consideration of deliverable loads, then the regulation should reflect how the adjustments will be made. Proposed subsection (h)(2), final-form subsection (i)(2), has not been deleted. The Department responds that in the 2003 “Water Quality Trading Policy Statement,” the EPA outlined that trading may be used to maintain water quality in waters where water quality standards are attained in ways such as compensating for new or increased discharges of pollutants. Typically, compliance points are outlined in a defined TMDL. Discharges from New York going through this Commonwealth at this time do not impact this Commonwealth’s ability to trade.

A comment was submitted that the public notices called for under § 92.61 are significantly different than what the Department has been using for credit generating proposals and are not appropriate for this purpose. This commentator suggested that the last sentence of proposed subsection (i) should be deleted. The Department did not delete this sentence in the final-form rulemaking as the sentence makes clear that the public participation requirements for the Nutrient Trading Program are different from what is required for permit applications.

G. *Benefits, Costs and Compliance*

Benefits

Harnessing market forces can be an effective way to achieve environmental regulatory goals at less expense than traditional command and control regulations. Market-based programs such as trading provide incentives for entities to create credits by going beyond any statutory or regulatory obligations. The final-form rulemaking provides clear and certain standards for nutrient credit trading in this Commonwealth and thereby supports the Department’s efforts to implement its nutrient credit trading program.

Compliance costs

The final-form rulemaking does not create new compliance requirements. It is essentially a voluntary program that provides economic incentives for increased pollutant reductions beyond those required by law.

Compliance Assistance Plan

While there are not new compliance requirements in this final-form rulemaking, the Department has an active and comprehensive outreach and education effort. Department staff will continue to attend public meetings of various kinds to describe the program and assist with its use by interested persons.

Paperwork requirements

There are no paperwork requirements as that term is normally used, as this is a voluntary program. The final-form rulemaking does contain requirements for submittal of certain information, as stated in § 96.8(e). However, the cost of these requirements will normally be returned through revenue earned in the sale of the credits or avoidance of more expensive compliance methods if credits or offsets were not used.

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 and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking is essentially a pollution prevention incentive program, as described previously in this preamble.

I. *Sunset Review*

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 3, 2010, the Department submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 876, to the Independent Regulatory Review Commission (IRRC) and to the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 18, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 19, 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) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 876.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this preamble.

L. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 96, are amended by adding § 96.8 to read as set forth in Annex A.

(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 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 upon publication in the *Pennsylvania Bulletin*.

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. 5106 (September 4, 2010).)

Fiscal Note: Fiscal Note 7-451 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 96. WATER QUALITY STANDARDS IMPLEMENTATION

§ 96.8. Use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context indicates otherwise:

Aggregator—A person that arranges for the sale of credits generated by another person, or arranges for the credits to be certified, verified and registered.

Agricultural operation—The management and use of farming resources for the production of crops, livestock or poultry, or for equine activity.

Baseline—

(i) The compliance activities and performance standards that must be implemented to meet current environmental laws and regulations related to the pollutant for which credits or offsets are generated.

(ii) The term includes allocations established under this chapter, in a TMDL or in a similar allocation, for the pollutant.

BMP—Best management practice—

(i) Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce pollutants to surface waters of this Commonwealth.

(ii) The term includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(iii) The term includes activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during and after earth disturbance activities.

(iv) The term also includes riparian buffers, soil and slope stabilization measures, control of fertilization practices, and other actions and measures designed to reduce erosion and runoff of soil, sediment and pollutants from the land surface during precipitation events; or to reduce the contamination of groundwater with pollutants that may affect surface waters.

(v) The term includes BMP measures developed under this title to reduce pollutant loading to surface waters.

Certification—Written approval by the Department of a proposed pollutant reduction activity to generate credits before the credits are verified and registered to be used to comply with NPDES permit effluent limitations.

Credit—The tradable unit of compliance that corresponds with a unit of reduction of a pollutant as recognized by the Department which, when certified, verified and registered, may be used to comply with NPDES permit effluent limitations.

Credit reserve—Credits set aside by the Department to address pollutant reduction failures and uncertainty.

DMR—Discharge monitoring report—The Department or EPA supplied forms for reporting of self-monitoring results by the permittee.

Delivery ratio—A ratio that compensates for the natural attenuation of a pollutant as it travels in water before it reaches a defined compliance point.

Edge of segment ratio—A ratio that identifies the amount of a pollutant expected to reach the surface waters at the boundary of a Chesapeake Bay Watershed Model segment through surface runoff and groundwater flows from a pollutant source within a watershed segment.

Nutrient—Nitrogen or phosphorus.

Offset—The pollutant load reduction measured in pounds that is created by an action, activity or technology which when approved by the Department may be used to comply with NPDES permit effluent limitations, conditions and stipulations under Chapter 92a (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance). The offset may only be used by the NPDES permittee that the Department determines is associated with the load reduction achieved by the action, activity or technology.

Pollutant—Nutrient or sediment.

Pollutant reduction activity—An activity, such as a BMP or effluent control, that is implemented to prevent or reduce a pollutant load to surface waters of this Commonwealth.

Registration—An accounting mechanism used by the Department to track certified and verified credits before they may be used to comply with NPDES permit effluent limitations.

Reserve ratio—A 10% ratio that is applied to the pollutant reductions generated, which establishes the credits to be set aside for the Department's credit reserve.

Threshold—Activities and performance standards beyond baseline compliance which are required under subsection (d)(3) before credits may be certified.

Tradable load—The amount of nonpoint source pollutant reduction determined to be the projected future pollutant load that is the difference between the total reduction theoretically possible from maximum implementation of pollutant reduction activities, and the reduction

associated with a level of pollutant reduction activities identified by the Department as reasonably attainable.

Trade—A transaction that involves the sale or other exchange, through a contractual agreement, of credits that have been certified, verified and registered.

Trading ratio—A ratio applied to adjust a pollutant reduction when calculating credits for a pollutant reduction activity. A trading ratio is used to address uncertainty, water quality, reduction failures or other considerations. The term will include a delivery ratio, an edge of segment ratio and a reserve ratio.

Verification—Assurance that the verification plan contained in a certification, permit or other approval issued by the Department under this section has been implemented. Verification is required prior to registration of the credits for use in an NPDES permit to comply with NPDES permit effluent limitations.

(b) *Chesapeake Bay water quality.*

(1) Credits and offsets may be used to meet legal requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay.

(2) Credits may be generated only from a pollutant reduction activity that has been certified, verified and registered under this section.

(3) Credits and offsets may be used by permittees to meet effluent limits for nitrogen, phosphorus and sediment expressed as annual loads in pounds contained in NPDES permits that are based on compliance with water quality standards established under the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1387), specifically for restoration, protection and maintenance of the water quality of the Chesapeake Bay.

(4) Credits and offsets may only be used for comparable pollutants, unless otherwise authorized by the Department. For example, nitrogen credits or offsets may only be used to meet nitrogen effluent limits.

(5) The use of credits and offsets must comply with legal requirements under applicable laws and regulations, including the requirements of this section.

(6) Credits and offsets may not be used to comply with technology-based effluent limits, except as expressly authorized under Federal regulations administered by the EPA.

(c) *Methodology.*

(1) *General.* The Department will use one or more of the methods, data sources or conclusions contained in this subsection when certifying a pollutant reduction activity to generate credits.

(2) Credits may be calculated by use of pollutant removal efficiencies for BMPs, and edge of segment and delivery ratios addressing fate and transport of pollutants, consistent with the most up-to-date version of the Chesapeake Bay watershed model. The pollutant removal efficiencies and edge of segment and delivery ratios will be available on the Department's Nutrient Trading web site.

(3) The Department may rely on results from the following modeling tools, as amended or updated, to approve other pollutant removal efficiencies for BMPs:

(i) Science Algorithms of the EPA Models-3 Community Multiscale Air Quality (CMAQ) Modeling System, Atmospheric Modeling Division, National Research Laboratory, U.S. Environmental Protection Agency, EPA/600/R-99/030, (Daewon Byun and Kenneth L. Schere, 2006).

(ii) EPA Watershed Model (Donigian et al. 1994; Linker 1996; Linker et al. 2000).

(iii) EPA Chesapeake Bay Hydrodynamic Model (Wang and Johnson 2000).

(iv) EPA Estuarine Water Quality Model (Cerco and Cole 1993, 1995a, 1995b; Thomann et al. 1994; Cerco and Meyers 2000; Cerco 2000; Cerco and Moore 2001; Cerco et al. 2002a).

(4) The Department may rely on the methods, data sources and conclusions in the following EPA documents, as amended or updated:

(i) *Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability.* EPA 903-R-03-004. Region III Chesapeake Bay Program Office, Annapolis, Maryland (2003).

(ii) *Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability-2004 Addendum.* EPA 903-R-04-006. Region III Chesapeake Bay Program Office, Annapolis, Maryland (2004).

(iii) *Revision, Chesapeake Bay Program Analytical Segmentation Schemes: decisions and rationales, 1983-2003.* EPA 903-R-04-008. CBP/TRS 268/04. Chesapeake Bay Program Office, Annapolis, Maryland (2004).

(iv) *Revision, Chesapeake Bay Program Analytical Segmentation Schemes: decisions and rationales, 1983-2003—2005 Addendum.* EPA 903-R-05-004. CBP/TRS 278/06. Chesapeake Bay Program Office, Annapolis, Maryland (2005).

(v) *Setting and Allocating the Chesapeake Bay Basin Nutrient and Sediment The Collaborative Process, Technical Tools and Innovative Approaches. Loads.* EPA 903-R-03-007. Region III Chesapeake Bay Program Office, Annapolis, Maryland (2006).

(vi) *Summary of Decisions Regarding Nutrient and Sediment Load Allocations and New Submerged Aquatic Vegetation (SAV) Restoration Goals.* April 25, 2003, Memorandum to the Principals' Staff Committee members and representatives of the Chesapeake Bay headwater states. Virginia Office of the Governor, Natural Resources Secretariat, Richmond, Virginia.

(vii) *The 2002 Chesapeake Bay Eutrophication Model.* EPA 903-R-04-004. U.S. Army Corps of Engineers, Engineer Research & Development Center, Environmental Laboratory (Cerco, C.F., and Noel, M.R., 2004).

(viii) *Ecosystem models of the Chesapeake Bay Relating Nutrient Loadings, Environmental Conditions and Living Resources Technical Report.* Chesapeake Bay Program Office, Annapolis MD (Kemp, MW., R. Bartlescn, S. Blumenshine, J.D. Hagey, and W.R. Boynlén, 2000).

(ix) *Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries.* U.S. EPA 2003b. EPA 903-R-03-002. Chesapeake Bay Program Office, Annapolis, Maryland.

(5) For a point source, the Department may rely on the information supplied by the permittee in the DMR, including offset information, when certifying a pollutant reduction activity to generate credits.

(6) When certifying a pollutant reduction activity to generate credits, the Department may rely on methods, data sources and conclusions contained in the *Pennsylvania Agronomy Guide* published by Pennsylvania State University, and the *Pennsylvania Technical Guide* published by the Federal Natural Resources Conservation

Service. The Department may also rely on other published or peer-reviewed scientific sources.

(d) *Eligibility requirements for the Chesapeake Bay.*

(1) *General.* To generate credits or offsets, the person shall demonstrate a reduction in the pollutant load beyond the pollutant load allowed under applicable baseline requirements, and beyond any applicable threshold.

(2) *Baseline requirements to generate credits.*

(i) For a nonpoint source, the baseline is the set of requirements in regulations applicable to the source at the location where the credits or offsets are generated, and the pollutant load associated with that location as of January 1, 2005. If since that date new requirements or operation changes have occurred that necessitate a revised set of requirements those establish the baseline. For an agricultural operation, baseline includes compliance with the erosion and sedimentation requirements for agricultural operations in Chapter 102 (relating to erosion and sediment control), the requirements for agricultural operations under § 91.36 (relating to pollution control and prevention at agricultural operations), § 92a.29 (relating to CAFOs) and the requirements for agricultural operations under Chapter 83, Subchapter D (relating to nutrient management), as applicable.

(ii) For a point source, the baseline is the pollutant effluent load associated with effluent limitations contained in the NPDES permit based on the applicable technology based requirements, or the load in a TMDL or similar allocation, whichever is more stringent.

(3) *Threshold requirements to generate credits.*

(i) To generate credits, an agricultural operation must meet one of the following threshold requirements at the location where the credits are generated.

(A) Manure is not mechanically applied within 100 feet of a perennial or intermittent stream with a defined bed or bank, a lake or a pond. This threshold can be met through one of the following:

(I) There is not a perennial or intermittent stream with a defined bed or bank, a lake or a pond on or within 100 feet of the agricultural operation.

(II) The agricultural operation does not mechanically apply manure, and applies commercial fertilizer at or below agronomic rates contained in the current *Penn State University Agronomy Guide* published by Pennsylvania State University.

(B) A minimum of 35 feet of permanent vegetation is established and maintained between the field and any perennial or intermittent stream with a defined bed or bank, a lake or a pond. The area may be grazed or cropped under a specific management plan provided that permanent vegetation is maintained at all times and there is no mechanical application of manure within the buffer area.

(C) The applicant applies an adjustment of at least 20% to the overall amount of the pollutant reduction generated by the pollutant reduction activity the person is submitting for certification.

(ii) The Department may establish other threshold requirements necessary to ensure the effectiveness of the use of credits to meet legal requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay.

(4) *Compliance status.* A person who by past or current noncompliance has demonstrated a lack of ability or intention to comply with any of the following is not eligible for certification or offset approval or to use credits or offsets to meet permit effluent limits:

(i) A Department regulation, permit, schedule of compliance, order or certification.

(ii) A law or regulation that addresses pollution of waters of this Commonwealth.

(iii) A contract for the exchange of credits.

(5) *Other requirements.* The Department may establish other eligibility requirements to ensure the effectiveness of the use of credits and offsets to meet legal requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay.

(6) *Failure to meet eligibility requirements.* If at any time prior to registration of a credit the Department determines that a person no longer meets the eligibility requirements under this section, the Department may take appropriate action, such as prohibiting the person from participating in any trading under this section or denying a request for certification, registration of any credits or approval of offsets.

(e) *Certification requirements for the Chesapeake Bay.*

(1) *General.* A pollutant reduction activity must be certified by the Department for the generation of credits before the credits may be applied to meet permit effluent limitations. Certification will serve as the Department's final determination of the amount of credits that the pollutant reduction activity may generate. A permittee may only use credits to meet permit effluent limits if certification is followed by verification and registration of the credits.

(2) *Request for certification.* A person who wishes to have a pollutant reduction activity certified by the Department to generate credits shall submit a written request for certification in the format required by the Department.

(i) The request for certification must contain information sufficient to demonstrate the following:

(A) That the location where the pollutant reduction activity will be implemented will meet applicable eligibility requirements under subsection (d) and will continue to meet those requirements throughout the applicable term of the certification.

(B) That the pollutant reduction activity will meet acceptable standards for construction and performance, including operation and maintenance, throughout the applicable term of the certification.

(C) That the calculation requirements of this section have been met.

(D) That the implementation of the pollutant reduction activity will be verified as described in a verification plan that meets the requirements of paragraph (5).

(ii) The request for certification must contain the following additional information:

(A) A detailed description of how the credits will be generated by the pollutant reduction activity, including calculations, assumptions and photos.

(B) A map illustrating the locations of the proposed pollutant reduction activity.

(C) Details on the timing of credits, such as the timing of credit generation and delivery, timing of a phase-in

period and the time frame for sale and use of credits toward permit effluent limits.

(D) The water quality classification under Chapter 93 (relating to water quality standards), and any applicable impairment listings under section 303(d) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1313(d)), for the receiving stream segment nearest the location of the proposed pollutant reduction activity.

(E) Information on sources of funding used to pay for any portion of the pollutant reduction activity, including the dollar amount and any conditions and restrictions regarding the use of the funds toward the generation or sale of credits.

(F) A description of how risks of failure of the pollutant reduction activity will be managed, such as the use of financial guarantee mechanisms, contractual arrangements, insurance products or reduction of the concentration of projects in a particular sub-watershed.

(G) A description of preservation and conservation easements on lands where the pollutant reduction activity is to be implemented.

(H) Identification of notations on documents submitted in the request which the person submitting the request claims to be confidential business information or a protected trade secret protected from disclosure by law, and a justification for the claims.

(I) The name of the person submitting the request and the names of the participants involved in the pollutant reduction activity.

(J) The professional qualifications of the persons who completed the calculations, conducted the baseline and threshold determinations or otherwise contributed to the technical merits of the request.

(K) Contact information for the person submitting the request.

(3) *Calculation requirements.* The following credit calculation requirements apply:

(i) The calculations must demonstrate how the pollutant reductions will be achieved from the proposed pollutant reduction activity to generate credits for the applicable period of time.

(ii) The pollutant reductions must be expressed in pounds per year.

(iii) The calculations used must be based on methodologies that the Department determines are appropriate under subsection (c).

(iv) The calculation for a point source may include excess load capacity attributable to activities such as effluent controls or the use of offsets.

(v) The calculation must include a 10% set aside for the Department's credit reserve.

(vi) The Department may establish other calculation requirements necessary to ensure that the use of credits is effective in meeting water quality requirements, and to address uncertainty for reasons such as unforeseen events that may disrupt pollutant reduction activities. The calculation requirements may include the need to use trading ratios, risk-spreading mechanisms and credit reserves. These calculation requirements may reduce the amount of credits the Department may certify for a pollutant reduction activity.

(4) *Other requirements considered for certification.*

(i) The annual sum of all credits certified from nonpoint sources in this Commonwealth's portion of the Chesapeake Bay Watershed may not exceed the applicable tradable load calculated by the Department for this Commonwealth's portion of the Chesapeake Bay Watershed. The tradable load will be available on the Department's Nutrient Trading web site.

(ii) If State or Federal funds are used to cost-share any portion of the pollutant reduction activity contained in the request for certification, the Department may allow the portion of the credits or offsets paid for by State and Federal funds to be available for certification, unless to restrict trading of that portion of the credits restrictions have been placed on the funds by the provider of the funds.

(iii) The Department will not certify a request that includes a pollutant reduction activity related to a farm land conversion action that includes the purchase and idling of a whole farm or a substantial portion of a farm to provide credits for use offsite. The Department will not certify a request that includes a pollutant reduction activity related to a farm land conversion action that includes farmland that is converted from agricultural land to another development type such as commercial or residential. However, to support farm land conservation programs, if a portion of farm land is retired or converted through a program such as one of the following, the action may be eligible for certification:

(A) The United States Department of Agriculture's Farm Services Agency Conservation Reserve Program (CRP).

(B) The United States Department of Agriculture's Conservation Reserve Enhanced Program (CREP).

(C) The United States Department of Agriculture's Natural Resources and Conservation Service's Environmental Quality Incentives Program (EQIP).

(5) *Verification plan.* A request for certification must contain a verification plan.

(i) The verification plan must include the methods for credit verification, such as the documentation of the implemented pollutant reduction activity, sufficient to allow the Department to verify that the pollutant reduction activity in the certification was properly implemented during the applicable compliance period.

(ii) The verification plan must also include one of the following methods. The method contained in the verification plan is subject to approval by the Department:

(A) Self-verification by the person responsible for implementing the pollutant reduction activity.

(B) Third-party verification.

(6) *Certification by the Department.* The Department will certify a pollutant reduction activity when it has determined that the requirements of paragraphs (1)—(5) have been met. In addition, the following apply:

(i) The Department may make a certification contingent on conditions to ensure that the requirements of this chapter will be satisfied.

(ii) The Department may only certify the pollutant reduction activity that will generate credits for use to meet permit effluent limits for the compliance period for which they are certified, verified and registered under this section.

(iii) The Department will only approve a request for certification for multiple compliance periods if the pollutant reduction activity that will generate the credits will be verified and registered separately for each compliance period.

(7) *Compliance.* A person to whom the Department issues a certification under this section shall comply with the terms and conditions of the certification.

(8) *Duration of certification.* The term of a certification is 5 years, unless the certification expressly states otherwise. To obtain a certification term longer than 5 years, a person requesting certification shall demonstrate to the Department's satisfaction that a longer term is warranted based on technological or economic factors, taking into consideration the requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay.

(9) *Renewal of certification.*

(i) A person seeking renewal of a certification shall submit a written request for renewal at least 180 days prior to the expiration of the certification.

(ii) The Department will provide public notice and an opportunity for informal comment when an administratively complete request is submitted.

(iii) The Department's final determination on a request for renewal will be based on the requirements of this section and on other applicable laws, water quality standards and requirements in effect at the time of the Department's determination.

(iv) By April 13, 2015, the recipient of a certification issued prior to October 9, 2010, shall submit a request for renewal of the certification. The Department will process the request in accordance with this paragraph. This subparagraph does not apply to a certification containing an expiration date.

(10) *Revocation.* The Department may revoke a certification for failure to comply with the conditions of the certification.

(f) *Verification requirements for the Chesapeake Bay.*

(1) *General.* Credits must be verified prior to registration. The following applies to verification:

(i) Verification must be conducted as described in the approved verification plan.

(ii) Verification must demonstrate that the pollutant reduction activity has been implemented as described in the certification, and that other requirements, such as baseline and threshold, are met.

(2) The Department may conduct other verification activities, such as monitoring and conducting inspections and compliance audits, to ensure that the pollutant reduction obligations are being met.

(g) *Registration requirements for the Chesapeake Bay.*

(1) *General.* Credits must be registered by the Department before they may be applied to a permit to meet effluent limitations.

(2) *Registration requirements.* The following registration requirements apply:

(i) Credits must be certified under the provisions of subsection (e).

(ii) Credits must be addressed in a valid contract that ensures that the requirements of this section will be met.

(iii) Credits must be verified prior to registration, under subsection (f).

(iv) The Department will assign a registration number to each registered credit for reporting and tracking purposes.

(3) *Failure to implement.* The Department will not register credits if the person who generates the credits has not implemented, or demonstrates a lack of ability or intention to implement, operations and maintenance requirements contained in the certification, verification plan, or other requirements of this section. The Department will not register credits submitted by an aggregator that is currently not complying, or demonstrates a lack of ability or intention to comply, with this section.

(h) *Use of credits and offsets to meet NPDES permit requirements related to the Chesapeake Bay.*

(1) A permittee will only be authorized to use credits and offsets through the provisions of its NPDES permit. The permit conditions will require appropriate terms, such as recordkeeping, monitoring and tracking, and reporting in DMRs.

(2) Only credits and offsets generated from activities located within the Chesapeake Bay Watershed may be used to meet NPDES permit requirements related to the Chesapeake Bay. Credits generated in either the Susquehanna or Potomac basins may only be used in the basin in which they were generated, unless otherwise approved by the Department.

(3) A permittee shall ensure that the credits and offsets that the permittee applies to its permit for compliance purposes are certified, verified and registered, or approved, under this section for the compliance period in which they are used.

(4) The Department may authorize a period of 60 days or less following the completion of the annual compliance period in an NPDES permit, for a permittee to come into compliance through the application of credits and offsets to the permit provided that the credits were registered and offsets were approved for use during that compliance period.

(5) A permittee relying on credits to demonstrate compliance with its permit effluent limitations, conditions and stipulations under Chapter 92a shall attain and maintain compliance with its permit. A permittee is responsible for enforcing the terms of its trade contract, when needed to ensure compliance with its permit. The Department may waive this requirement where the pollutant reduction activity fails due to uncontrollable or unforeseeable circumstances such as extreme weather conditions, and timely notice is provided to the Department, if the following apply:

(i) The failure is not due to negligence or willfulness on the part of the permittee.

(ii) The Department determines that replacement credits will be available.

(iii) The Department determines that the requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay will be met due to the requirements of this section, which may include the type of methodologies used when certifying credits, the existence of an approved legal mechanism that is enforceable by the Department, and the use of a credit reserve.

(6) A permittee shall document the use of credits and offsets in DMR forms, which the permittee shall submit at the end of each compliance year or as otherwise

provided or required in the permit. Credits and offsets shall only be used to meet permit effluent limits for the compliance period for which they are certified, verified and registered, or approved, by the Department under this section.

(i) *Water quality and TMDLs.*

(1) Use of credits and offsets under this section will be allowed only where surface water quality will be protected and maintained as required by applicable regulations, including this chapter, Chapters 92a and 93, as well as Department permits, schedules of compliance and orders.

(2) Use of credits and offsets under this section must ensure that there is no net increase in discharge of pollutants to the compliance point used for purposes of determining compliance with the water quality standards established by the states of Maryland and Virginia for restoration, protection and maintenance of water quality of the Chesapeake Bay.

(3) Where a TMDL has been established for the watershed where the permitted activity is located, the use of credits and offsets under this section will be consistent with the assumptions and requirements upon which the TMDL is based.

(4) Use of credits and offsets under this section will comply with the antidegradation requirements contained in Department regulations.

(j) *Public participation.* The Department will publish a notice in the *Pennsylvania Bulletin* of the receipt of administratively complete requests for certifications of a pollutant reduction activity to generate credits. The notice will provide an opportunity for informal comments. This notice is not required to follow the requirements of § 92a.82 (relating to public notice of permit applications and draft permits). The Department will also publish notice in the *Pennsylvania Bulletin* of its final certification determination.

(k) *Use of credits and offsets generally.* Nothing in this section precludes the Department from allowing the use of credits and offsets to be used to meet permit limits other than those established for restoration, protection and maintenance related to the water quality of the Chesapeake Bay.

[Pa.B. Doc. No. 10-1927. Filed for public inspection October 8, 2010, 9:00 a.m.]

for the biennial license period that begins January 1, 2011. Consistent with existing requirements, at least 30 hours shall be in podiatry courses and programs approved by the Board or the Council on Podiatric Medical Education (CPME). The remaining 20 hours shall be either in Board- or CPME-approved podiatry courses and programs or in courses and programs in medical subjects that are approved by the American Medical Association (AMA) or the American Osteopathic Association (AOA).

The final-form rulemaking further amends § 29.61(a) by: making editorial changes to the 10-hour limitation on the number of continuing education hours that may be obtained by means of the Internet or through the reading of professional journals and magazines; adding a provision formerly in § 29.63a, that continuing education credit will not be awarded for courses or programs in office management or marketing the practice; and clarifying that a licensee bears the responsibility for ensuring that continuing education hours have been approved prior to participating in the course or program for which continuing education credit is sought.

The final-form rulemaking also rescinds § 29.63a because its contents are adequately treated in final-form § 29.61.

Statutory Authority

Section 9.1 of the Podiatry Practice Act (act) (63 P. S. § 42.9a) authorizes the Board to prescribe continuing education requirements, while section 15 of the act (63 P. S. § 42.15) authorizes the Board to adopt regulations as it deems necessary and proper to carry out its statutory responsibilities.

Summary of Comments and Responses to Proposed Rulemaking

The Board published a notice of proposed rulemaking at 39 Pa.B. 7107 (December 19, 2009), with a 30-day public comment period. The Board received a general comment in support of the proposed rulemaking from the Pennsylvania Podiatric Medical Association, a professional organization that represents the majority of licensed podiatrists in this Commonwealth.

The Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (House Committee) as part of their review of the proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (Senate Committee) as part of its review of the proposed rulemaking under the Regulatory Review Act.

The following discussion summarizes the comments and the Board's responses:

The proposed rulemaking required that the additional 20 hours of continuing education shall be either in courses and programs in podiatry that are approved by the Board or CPME or in courses and programs in "related medical subjects" that are approved by AMA or AOA. IRRC commented that the phrase "related medical subjects" is vague because it does not apprise a licensee of what medical subjects are related to the practice of podiatry. IRRC recommended that a more precise standard be included in the final-form rulemaking.

Consistent with the regulatory approach utilized by many other states' podiatric licensing boards, the proposed rulemaking was intended to permit a licensee to obtain continuing education credit, up to a maximum of 20 hours, for a course or program in a medical subject

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PODIATRY [49 PA. CODE CH. 29] Continuing Education

The State Board of Podiatry (Board) amends Chapter 29 to read as set forth in Annex A.

The final-form rulemaking amends § 29.61(a) (relating to requirements for biennial renewal and eligibility to conduct educational conferences) to increase the biennial continuing education requirement for podiatrists from 30 hours to 50 hours, effective with the renewal of licensure

that is approved by AMA and AOA. As stated in the proposed rulemaking, the collaborative, interdisciplinary approach to the diagnosis and treatment of medical conditions has fostered a commonality of interests among podiatrists and allopathic and osteopathic physicians. Podiatrists can obtain useful information and insight for their practices from medical subjects as diverse as diabetes management, orthopedics, dermatology and radiology. To clarify that podiatrists are not limited in the medical subjects they may take in continuing education courses and programs offered under the auspices of AMA or AOA, the final-form rulemaking deletes “related” as a modifier of “medical subjects” in § 29.61.

The House Committee commented that the Board’s use of the terms “course,” “program” and “educational conference” in § 29.61 and other continuing education regulations is confusing and requested a clarification of their meanings.

The terms have been used interchangeably to refer to educational offerings. “Educational conference” is used in section 9.1 of the act and the term is referenced throughout the Board’s continuing education regulations. In 2003, when the continuing education regulations were last amended, the Board employed the terms “course” and “program” as an alternate usage to “educational conference.” The new terms are more descriptive of the continuing education options available to podiatrists on the Internet and through self-study. Although it has not been advised by a podiatrist that the alternate usage in the regulations has led to misapprehension of the continuing education requirements, the Board intends to utilize more uniform terminology in the continuing education regulations. Because making these changes now would enlarge the original purpose of the proposed rulemaking, the Board will initiate a separate rulemaking to address the matter.

The final-form rulemaking retains language in § 29.61 that prohibits the carrying over of excess continuing education hours from one biennial license period to another. The House Committee questioned whether it would be beneficial, given considerations of time management and cost, to permit a podiatrist to carry over a minimum number of continuing education hours to the next biennial license period without defeating continuing education’s purpose of maintaining current skills and knowledge.

The Board believes that allowing a podiatrist to utilize continuing education hours from an earlier biennial license period is contrary to section 9.1 of the act, which requires a podiatrist who is applying for license renewal to have completed the required hours of continuing education during the immediately preceding biennial license period. All but 1 of the other 18 licensing boards within the Bureau of Professional and Occupational Affairs (BPOA) that require continuing education as a condition of license renewal prohibit the carrying over of excess continuing education hours from one biennial license period to another.

The House Committee and IRRC questioned how a licensee can fulfill his responsibility, in revised § 29.61, to ensure that a particular course or program is approved for continuing education credit prior to participating in the course or program.

The regulations require a podiatrist to obtain continuing education hours in courses and programs that have been approved by the Board, CPME, AMA or AOA. A podiatrist can ascertain whether a course or program is

approved for continuing education credit by contacting these four approving bodies. The Board maintains an updated listing of currently approved programs and courses on its web site; likewise, CPME, AMA and AOA each maintains a web site with information about approved continuing education providers. In addition, the promotional and solicitation materials for a continuing education course or program typically indicate whether it is sanctioned by an approving body.

The House Committee asked whether the current biennial renewal fee of \$395 is adequate to support the additional workload for the Board’s administrative office in auditing the increased number of continuing education hours completed by licensees.

The Board does not believe the costs of the additional auditing workload will be substantial. Like all other BPOA licensing boards with continuing education requirements, the Board does not audit its licensees for continuing education compliance; rather, it randomly selects a percentage of its licensees for a compliance audit. The Department of State’s Bureau of Finance and Operations, which monitors the revenues and expenses of BPOA licensing boards, has not advised the Board that its current biennial renewal fee is inadequate to defray costs associated with a modest expansion of its administrative activities.

The House Committee asked how the Board has apprised podiatrists of the increased continuing education requirement other than through the posting of a notice on the Board’s web site.

In December 2008, the Board mailed a notice about the initiation of this rulemaking to each currently licensed podiatrist in this Commonwealth. The notice provided information about the type and number of continuing education hours that would be required as a condition of license renewal for the 2011-2012 license period. Contemporaneous with the submission of final-form rulemaking, the Board mailed a reminder notice about the increased continuing education requirement to each currently licensed podiatrist in this Commonwealth.

The House Committee asked whether the increased continuing education requirement would affect reciprocity with neighboring states.

The increased continuing education requirement will not have a direct impact on reciprocity because reciprocity is based on the similarity of states’ requirements for initial licensure rather than their requirements for renewal of licensure. Moreover, given that four of six states that border this Commonwealth currently require podiatrists to complete at least 50 hours of continuing education biennially, it is unlikely that continuing education will prove to be a determining factor in the decisions of podiatrists to seek practice privileges across state lines.

Fiscal Impact

The final-form rulemaking will require podiatrists to incur costs in meeting the increased continuing education requirement. The costs cannot be quantified because of the large number and type of continuing education courses and programs available; however, the costs are not believed to be substantial or burdensome. Many podiatrists already exceed the current 30-hour continuing education requirement.

The final-form rulemaking will cause the Board’s administrative office to incur unspecified costs regarding auditing compliance with the increased continuing education requirement. The current \$395 biennial renewal fee

paid by podiatrists will defray the costs, which, as previously noted, are not believed to be substantial.

The final-form rulemaking will not have a fiscal impact on the public or on other agencies and political subdivisions of this Commonwealth.

Paperwork Requirements

The final-form rulemaking will require podiatrists to retain records regarding their increased continuing education hours and to submit the records to the Board upon audit. The final-form rulemaking will require the Board to revise its biennial renewal application. The final-form rulemaking will not create additional paperwork for the general public or for other agencies and political subdivisions of this Commonwealth.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin* and will apply to the renewal of licensure for the 2011-2012 biennial license period.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 9, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 7107, to IRRC and the Chairpersons of the House and Senate 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 Board 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 September 15, 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 September 16, 2010, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should contact Gina Bittner, Administrator, State Board of Podiatry, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4858, ST-PODIATRY@state.pa.us.

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 to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 39 Pa.B. 7107.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under authority of the act, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 29, are amended by amending § 29.61 and by deleting § 29.63a to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval 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) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

RICHARD G. STUEMPFLE, DPM,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5655 (October 2, 2010).)

Fiscal Note: Fiscal Note 16A-4410 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 29. STATE BOARD OF PODIATRY
CONTINUING EDUCATION**

§ 29.61. Requirements for biennial renewal and eligibility to conduct educational conferences.

(a) Effective with the renewal of licensure for the 2011-2012 biennium, a licensee applying for biennial renewal of a license shall have completed 50 clock hours of continuing education in approved courses and programs during the preceding biennium. At least 30 of the clock hours must be in courses and programs in podiatry that are approved by the Board or the Council on Podiatric Medical Education (CPME). The remaining clock hours must be either in courses and programs in podiatry that are approved by the Board or the CPME or in courses and programs in medical subjects that are approved by the American Medical Association or the American Osteopathic Association. A maximum of 10 clock hours may be in approved courses and programs that involve the use of the Internet or the reading of professional journals or magazine articles. Continuing education credit will not be awarded for clock hours in office management or marketing the practice. Excess clock hours may not be carried over to the next biennium. A licensee is responsible for ensuring that a particular course or program is approved for continuing education credit prior to participating in the course or program.

(b) Providers approved by the Board are eligible to conduct educational conferences.

(c) Applicants for license renewal shall provide, on the renewal application, a signed statement certifying that the continuing education requirements have been met and information to document their certification, including the following:

- (1) The date attended.
- (2) The clock hours claimed.
- (3) The title of the course or program and description of content.

(4) The provider which sponsored the course or program.

(5) The location of the course or program.

(d) The licensee shall retain attendance certificates to document completion of the prescribed number of clock hours for 5 years following the completion of each course, which shall be produced upon demand by the Board or its auditing agents.

§ 29.63a. (Reserved).

[Pa.B. Doc. No. 10-1928. Filed for public inspection October 8, 2010, 9:00 a.m.]

STATE BOARD OF LANDSCAPE ARCHITECTS
[49 PA. CODE CH. 15]
Fees—Landscape Architect

The State Board of Landscape Architects (Board) amends § 15.12 (relating to fees). The final-form rulemaking increases the biennial license renewal fees for landscape architects from \$125 to \$194.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The new biennial renewal fees will take effect for the biennial period beginning June 1, 2011.

Statutory Authority

Section 5(a) of the Landscape Architects' Registration Law (act) (63 P.S. § 905(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to match expenditures over a 2-year period.

Background and Need for Amendment

Under section 5(a) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board will increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises virtually all of its revenue through biennial renewal fees. The biennial renewal fee has not been increased since 1983.

At the March 12, 2009, Board meeting the Department of State's Bureau of Finance and Operations (BFO) staff presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2006-2007 and 2007-2008 and projected revenue and expenses through FY 2017-2018. BFO projects that, without an increase to the biennial renewal fee, the Board will incur significant deficits. BFO recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 5(a) of the act. As a result, the Board voted to increase the biennial renewal fee from \$125 to \$194. BFO anticipates that the new biennial renewal fees will enable the Board to avoid the projected deficits and meet its estimated expenditures for years to come. The Board has a stable population base of just under 1,000 landscape architects and a low adjudicatory docket.

Notice of the proposed rulemaking was published at 40 Pa.B. 623 (January 30, 2010), requesting public comments within 30 days. No public comments were received. On March 10, 2010, the House Professional Licensure

Committee (HPLC) submitted a comment to the Board. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. On March 31, 2010, the Board received a letter from the Independent Regulatory Review Commission (IRRC) indicating that it did not have objections, comments or recommendations to offer on the proposed rulemaking.

Comment and the Board's Response

The HPLC asked for the Board's rationale for the 55% increase in the biennial renewal fee for landscape architects when there has not been change in the amount of the fee in 27 years. The Board's response is simply that until now, a fee increase was not necessary because the Board has consistently had a positive balance in its account at the end of each FY which was adequate to fund the Board's operations for the next FY, even without considering the projected revenue for the next FY. At the end of FY 2007-2008, the balance was \$99,650.67; and at the end of FY 2008-2009, the balance was \$99,150.67. The Board's annual budget is approximately \$90,000, so an increase was not indicated in that at the end of each of the 3 years; there was enough money to operate for the next FY without a fee increase. However, at the end of FY 2009-2010, BFO is projecting a balance of only \$10,150.67. Further, BFO is projecting that without a fee increase, the Board is facing a deficit of \$37,850 at the end of FY 2011-2012. This amount is significant given the Board's annual budget of approximately \$90,000. Thus, it is necessary to have a fee increase in effect by FY 2011-2012 to avoid a deficit situation.

The Board voted to adopt a one-time increase from \$125 to \$194 to be effective with the 2011 renewal because it would avoid the projected deficit and put the Board back on firm financial ground with projected positive balances in its account for the foreseeable future. Going forward, the Board estimates biennial revenue of approximately \$212,000 (\$189,000 in renewal years and \$23,000 in nonrenewal years). This amount will be sufficient to fund the Board's biennial expenditures, which are projected to be approximately \$180,000 to \$200,000. These amounts are in keeping with the Board's legislative mandate that revenues received from fees, fines and civil penalties be sufficient to cover expenditures over a 2-year period.

In addition, the Board felt strongly that an increase that amounts to \$34.50 per year would not be overly burdensome for landscape architects. A survey of 47 other states' renewal fees for landscape architects indicates a range from a low of \$60 (Illinois, \$30 annual renewal fee) to a high of \$610 (Texas, \$305 annual renewal fee), with an average of \$220 for biennial renewal. Therefore, the Board does not believe a \$194 biennial renewal fee will put landscape architects in this Commonwealth at a competitive disadvantage, while it will provide the Board sufficient revenue to fund its activities without the need for another increase for years to come.

Fiscal Impact

The final-form rulemaking will increase the biennial renewal fee for landscape architects by \$69 or \$34.50 per year. There are currently 989 actively licensed landscape architects that will be expected to pay the increased biennial renewal fee. The final-form rulemaking should not have other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The final-form rulemaking requires the Board to alter some of its forms to reflect the new biennial renewals fees; however, the final-form rulemaking should not create additional paperwork for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a FY and biennial basis. 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 January 14, 2010, the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 623, 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 September 15, 2010, the final-form rulemaking was approved by the HPLC and the SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved effective September 15, 2010.

Contact Person

Further information may be obtained by contacting Teresa Lazo, Board Counsel, State Board of Landscape Architects, 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 act.

Order

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

- (a) The regulations of the Board, 49 Pa. Code Chapter 15, are amended by amending § 15.12 to read as set forth at 40 Pa.B. 623.
- (b) The Board shall submit this order and 40 Pa.B. 623 to the Office of General Counsel and the Office of Attorney General as required by law.
- (c) The Board shall certify this order and 40 Pa.B. 623 and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

JAMES W. BARNES, LA,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5655 (October 2, 2010).)

Fiscal Note: Fiscal Note 16A-619 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 10-1929. Filed for public inspection October 8, 2010, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 71]

School Bus Drivers

The Department of Transportation (Department), under 75 Pa.C.S. § 1509 (relating to qualifications for school bus driver endorsement), amends Chapter 71 (relating to school bus drivers) to read as set forth in Annex A.

Purpose of Chapter

The purpose of Chapter 71 is to define more fully the requirements of 75 Pa.C.S. § 1509 by listing minimum medical requirements for school bus drivers, formulated by the Medical Advisory Board (Board). In addition to their use by the Department in connection with its responsibilities under 75 Pa.C.S. (relating to Vehicle Code), these licensing standards for school bus drivers are to be used by medical providers when conducting physical examinations of applicants for a school bus learner's permit, as well as annual school bus driver physical examinations.

Summary of Comments and Changes in Final-Form Rulemaking

Notice of proposed rulemaking was published at 38 Pa.B. 3503 (June 28, 2008). The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees.

IRRC submitted several comments on the proposed rulemaking regarding clarity and consistency of the language. The first comment noted that the Regulatory Analysis Form indicated that the proposed rulemaking should not have additional costs to school bus drivers or healthcare providers. However, IRRC noted that Lynn Foltz, a commentator, commented that the amendments would lead to additional costs, including a fee for an appointment with physician to review the results of the required tests, as well as for the Hemoglobin A1C (HbA1C) test itself. The Department notes that these amendments do not require tests that are over and above what is required for normal diabetic care. Board members have confirmed that insurance companies encourage physicians to do quarterly checks of an individual's HbA1C. In fact, physicians are audited by insurance companies to ensure compliance.

IRRC also sought clarity in § 71.3(b)(4)(i) (relating to physical examination) regarding the removal of the term "oral hypoglycemic medication" and its replacement with the term "diabetic medications." IRRC recommended that a listing of specific types of examples of diabetic medications be included in the final-form rulemaking. Diabetic medications can either be in the form of an insulin injection or an oral medication. The Department believes that a listing of specific medications could lead to confu-

sion and misinterpretation of the regulation to only allow those medications listed and leaving no room for other medications developed for the treatment of diabetes in the future.

IRRC also questioned whether drivers shall meet the requirements in § 71.3(b)(4)(i)(A)—(D) before being granted a waiver to drive a school bus. If so, IRRC recommended that clarifying language be added. The clarifying language has been added.

Regarding § 71.3(b)(4)(i)(A), IRRC asked how the Department determined that the 12 months required for being free from various types of hypoglycemia or hypoglycemic reactions to grant an individual a waiver to drive is an appropriate amount of time, and if this time frame protects the health, safety and welfare of children being driven in school buses by drivers with these types of conditions. The Department consulted closely with the physicians on the Board who advised that an individual can readily demonstrate his ability to manage diabetes within a 12-month period. Requiring an individual to demonstrate control for 2 years rather than 1 year doesn't provide an additional degree of safety.

Peter S. Lund, MD, FACS, President of the Pennsylvania Medical Society commented that requiring school bus drivers in § 71.3(b)(4)(i)(B) to have an average HbA1C of 8% is too restrictive. Doctor Lund relayed the opinion of Dr. Robert Gabbay, MD, PhD, Executive Director of the Penn State Institute for Diabetes and Obesity that impairment of cognitive ability is not demonstrated until HbA1C of 9%. A number of factors were used to determine what HbA1C demonstrates the individual is managing their diabetes. Physicians typically use 6.5% as a target; however, the Department also considered that both health insurance companies, as well as the American Diabetes Association (ADA) give a target HbA1C of 7%. Research shows that keeping blood sugar close to the target range lowers the risk for complications. An HbA1C of 8% translates to an average blood sugar reading of 205 mg/dl and demonstrates reasonable control. The Department concluded that a cut off at a point below, rather than at, the 9% level where cognitive impairment has been demonstrated is appropriate to safeguard the well being of students being transported by school bus in this Commonwealth.

Also with regard to the use of the HbA1C test, the ADA objected to the use of the test result number as a standard to measure an individual's ability to operate a vehicle safely. After consultation with the ADA, the final-form rulemaking provides that the HbA1C test will not be used as a measurement to determine a driver's level of safety for driving a school bus. Rather, the HbA1C results will instead be used as a tool to identify school bus drivers that require more frequent monitoring by their health care provider to ensure that their blood glucose levels are not suggestive of hypoglycemic or hyperglycemic driving impairment.

The ADA also commented that that the inclusion of a standard of "hyperglycemic unawareness" was inappropriate. It was pointed out that a driver who tends not to be sensitive to the triggers of onset of a hyperglycemic episode can nevertheless drive safely with more frequent testing before driving or at regular interval during long trips. The term has been deleted from the final-form rulemaking.

IRRC also asked for information regarding what the new forms will look like. Unfortunately, the Department does not have draft copies of the forms available. Once

this rulemaking has been vetted and close to final-form, the Diabetic Waiver and Report of Eye Examination forms will be updated with the applicable questions. The forms will not be available on the Department's web site. They will only be mailed to school bus drivers that have diabetes mellitus and require the waiver.

IRRC also asked for clarification in § 71.3(b)(4)(v) regarding submissions to the Department and what professions are included under the term "other health care providers." The Department included a definition of "health care provider" in the final-form rulemaking. Further clarification has also been provided by use of the term "school transportation medical practitioner" instead of "school transportation physician." The former, "school transportation medical practitioner," is defined in the existing regulation to include the same array of medical professionals as has been included in the definition of "health care provider."

Finally, regarding § 71.3(b)(4)(i)(D), IRRC asked how the self-monitoring provisions of this subsection protects the driver, students and other passengers. The comment goes not to the specific amendments made in this subsection by this rulemaking, but to the effectiveness of the existing subsection generally. The safety of the students and other passengers is protected by the requirement in the subsection that, if self testing reveals an unacceptable blood glucose level, the individual "may not drive." If a driver tests outside the range prior to departure, the driver may not embark; if a driver stopped to test at a required interval during a drive tests outside the range, the driver may not resume driving until appropriate measures are taken and the individual retests within the acceptable range.

Persons and Entities Affected

This final-form rulemaking affects persons qualified or wishing to be qualified to drive a school bus, employers of school bus drivers and health care providers.

Fiscal Impact

Implementation of this final-form rulemaking will not require the expenditure of additional funds by the Commonwealth or local municipalities. This final-form rulemaking will not impose additional costs on the medical community. It should not impose additional costs on school bus drivers because the final-form rulemaking does not require tests that are over and above what is required for normal diabetic care.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 28, 2008, the Department submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B 3503, to IRRC and the Chairpersons of the House and Senate Transportation Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on August 18, 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 August 19, 2010, and approved the final-form rulemaking.

Effective Date

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

Sunset Provisions

The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under 75 Pa.C.S. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for technical questions about this final-form rulemaking is R. Scott Shenk, Manager, Driver Safety Division, Bureau of Driver Licensing, 1101 South Front Street, 4th Floor, Harrisburg, PA 17104, (717) 772-2119.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 71, are amended by amending §§ 71.2 and 71.3 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

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

ALLEN D. BIEHLER, P. E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5106 (September 4, 2010).)

Fiscal Note: Fiscal Note 18-411 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 71. SCHOOL BUS DRIVERS

§ 71.2. Definitions.

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

CRNP—Certified registered nurse practitioner—A registered nurse licensed in this Commonwealth who is certified by the State Board of Nursing in a particular clinical specialty area and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth.

Chiropractor—A practitioner of chiropractic as defined in 75 Pa.C.S. § 1508.1(b) (relating to physical examinations).

Department—The Department of Transportation of the Commonwealth.

Driver's examination—An examination to establish the ability of a person to drive, maneuver and control a school bus with safety and knowledge of the laws and regulations relating to the operation of school buses.

HbA1C test—A Hemoglobin A1C test monitors the long-term control of diabetes mellitus.

Health care provider—A licensed physician, a CRNP, a physician assistant or a licensed psychologist, as described in 75 Pa.C.S. § 1519 (relating to determination of incompetency).

Hyperglycemia—When the level of glucose (sugar) in the blood is too high based on current guidelines established by the American Diabetes Association.

Hypoglycemic reactions—Different degrees of hypoglycemia which are classified as follows:

Mild—Hypoglycemia that signals a blood glucose drop, which the individual can self-correct with oral carbohydrates.

Severe—Hypoglycemia that requires outside intervention or assistance of others or that produces confusion, loss of attention or a loss of consciousness.

Physical examination—An examination, including an eye examination, given to determine the physical and mental fitness of a person to drive a school bus safely.

Physician—A licensed physician as defined in § 83.2 (relating to definitions).

Physician assistant—A person certified by the State Board of Medicine to assist a physician or group of physicians in the provision of medical care and services and under the supervision and direction of the physician or group of physicians.

Pupil Transportation Section—The Pupil Transportation Section of the Bureau of Driver Licensing of the Department.

S endorsement—An endorsement which is added to a commercial driver's license and which authorizes the driver to operate a school bus.

School bus driver—A person who drives a school bus as defined in 75 Pa.C.S. § 102 (relating to definitions) or Chapter 171 (relating to school buses and school vehicles) except an owner or employee of an official inspection station driving the vehicle for the purpose of inspection.

School transportation medical practitioner—A licensed physician, physician assistant, certified registered nurse practitioner or chiropractor appointed or approved by a school board, or by the authorities responsible for operation of a private or parochial school. The same person may be appointed or approved as both school transportation medical practitioner and school medical practitioner.

Symptomatic hyperglycemia—High glucose levels in the blood that have caused a loss of consciousness or an altered state of perception, including, but not limited to, decreased reaction time, impaired vision or hearing, or both, or confusion.

Type I Diabetes mellitus—A chronic disease caused by the pancreas producing too little insulin to regulate blood sugar levels.

Type II Diabetes mellitus—A chronic disease marked by high levels of sugar in the blood caused by the body failing to respond correctly to natural insulin.

§ 71.3. Physical examination.

* * * * *

(b) *Requirements of physical examination.* A person is physically qualified to drive a school bus if the person:

- (1) Meets the following visual requirements:
 - (i) Has distant visual acuity of at least 20/40 in the better eye without corrective lenses or visual acuity corrected to 20/40 or better.
 - (ii) Has at least 20/50 in the poorer eye without corrective lenses or visual acuity corrected to 20/50 or better.
 - (iii) Has distant binocular acuity of at least 20/40 in both eyes with or without corrective lenses.
 - (iv) Has a combined field of vision of at least 160° in the horizontal meridian, excepting the normal blind spots.
 - (v) Has the ability to determine the colors used in traffic signals and devices showing standard red, green, or amber.
- (2) Has no loss of a foot, a leg, a hand, or an arm; or has been granted a waiver by the Department after competency has been demonstrated through a driving examination administered in accordance with § 71.4(b)(2)(ii) and (iii) (relating to driver's examination).
- (3) Has no impairment of:
 - (i) A hand or finger likely to impair prehension or power grasping, or has been granted a waiver by the Department after competency has been demonstrated through a driving examination administered in accordance with § 71.4(b)(2)(ii) and (iii).
 - (ii) One of the following:
 - (A) An arm, foot, or leg likely to impair the ability to perform normal tasks associated with driving a school bus.
 - (B) Another significant limb defect or limitation likely to impair the ability to perform normal tasks associated with driving a school bus.
 - (C) Has been granted a waiver by the Department after competency has been demonstrated through a driving examination.
 - (4) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring use of insulin or other hypoglycemic medication.
 - (i) A waiver may be granted to an individual requiring the use of diabetic medications provided the individual meets all of the following:
 - (A) The individual's health care provider verifies in writing that there has been no incident of a severe hypoglycemic reaction or symptomatic hyperglycemia and the individual has been free from insulin reaction resulting in loss of consciousness, attention or awareness or the requirement of assistance from another person, for the preceding 12 months.
 - (B) The driver submits to a diabetic examination every 6 months, and submits the results of the examination and the results of an HbA1C test on a form provided by the Department. The healthcare provider reviewing the diabetic examination shall be familiar with the individual's past diabetic history for 24 months or have access to that history and certify that the individual is under good diabetic control.
 - (I) An individual who has had two consecutive HbA1C test results of greater than 8% as required in this clause

shall undergo additional diabetic examinations every 3 months. The health care provider shall review the self monitoring blood glucose logs and report the highest and lowest blood glucose levels for that 3-month period and certify that the observed blood glucose levels are not suggestive of hypoglycemic or hyperglycemic driving impairment on a form provided by the Department.

(II) Once the results of two consecutive HbA1C tests required in this clause are 8% or less, the individual may discontinue the additional examinations and reporting required in subclause (I).

(C) The driver submits to an annual dilated eye examination and submits the results of the examination on a form provided by the Department.

(D) Individuals, upon hire to drive a school bus, shall manage their diabetes by complying with the following requirements:

(I) Self-monitor blood glucose 1 hour before driving, and at least every 4 hours while driving or while otherwise on duty, by using a portable blood glucose monitoring device with a computerized memory. If blood glucose is below 80 mg/dL or above 350 mg/dL the individual may not drive until appropriate measures are taken and the individual retests within this acceptable range.

(II) Submit the computerized glucometer results of blood glucose self-monitoring for review by the treating health care provider or a school transportation medical practitioner. The results shall also be submitted to the health care provider conducting the diabetic examination required by clause (B).

(III) Maintaining a manual blood glucose monitoring log and submitting it, together with the glucose monitoring device's computerized log, every 6 months to the health care provider conducting the 6-month diabetic examination.

(IV) Carrying a source of rapidly absorbable glucose at all times while driving a school bus.

(ii) Notwithstanding the provisions in subparagraph (i), a waiver may be granted to an individual who has recently suffered from a severe hypoglycemic reaction or symptomatic hyperglycemia as long as the individual has been free from severe hypoglycemic reactions or symptomatic hyperglycemia for the preceding 12 months and the subsequent severe hypoglycemic reaction or symptomatic hyperglycemia occurred while the individual was under the care of a treating health care provider, during or concurrent with a nonrecurring transient illness, toxic ingestion or metabolic imbalance. This waiver will only be granted if the treating physician submits written certification indicating it is a temporary condition or isolated incident not likely to recur.

(iii) A reviewing health care provider finding that the individual previously qualified for a waiver is not complying with the requirements in subsection (b)(4)(i), or is otherwise no longer qualified for the waiver shall promptly report these findings to the Department and the waiver will be rescinded.

(iv) If the individual requiring the use of oral hypoglycemic medication or insulin does not qualify for a waiver, that individual may request an independent review of the individual's medical records. The review will be conducted by a member of the Medical Advisory Board or by another physician designated by the Department.

(v) Submissions to the Department by physicians or other health care providers, including physician verifications and the results of diabetic examinations, shall be made on forms provided by the Department.

* * * * *

[Pa.B. Doc. No. 10-1930. Filed for public inspection October 8, 2010, 9:00 a.m.]

**DEPARTMENT OF TRANSPORTATION
[67 PA. CODE CH. 83]**

Physical and Mental Criteria, Including Vision Standards Relating to the Licensing of Drivers

The Department of Transportation (Department), under 75 Pa.C.S. §§ 1517, 1518 and 6103 (relating to Medical Advisory Board; reports on mental or physical disabilities or disorders; and promulgation of rules and regulations by department), amends Chapter 83 (relating to physical and mental criteria, including vision standards relating to the licensing of drivers) to read as set forth in Annex A.

Purpose of Chapter

The purpose of Chapter 83 is to set forth physical and mental criteria, including vision standards, for the licensing of drivers, formulated by the Medical Advisory Board (Board) under 75 Pa.C.S. §§ 1517 and 1518. In addition to their use by the Department in connection with its responsibilities under 75 Pa.C.S. (relating to Vehicle Code), these physical and mental criteria are to be used by medical providers in conducting physical examinations of applicants for learner permits and driver licenses and by physicians and other persons authorized to diagnose and treat disorders and disabilities covered in Chapter 83 to determine whether a person should be reported to the Department as having a disorder affecting the ability of the person to drive safely.

Summary of Comments and Changes in Final-Form Rulemaking

Notice of proposed rulemaking was published at 38 Pa.B. 3501 (June 28, 2008). The proposed rulemaking was also submitted to the Independent Regulatory Review Commission (IRRC) and the House and Senate Transportation Committees (Committees).

IRRC submitted several comments on the proposed rulemaking regarding clarity and consistency of the language in the regulations. The first comment noted that in § 83.2 (relating to definitions), the Department missed a cross-reference to 75 Pa.C.S. § 1518. In response to the comment, the definition of “chiropractor” in the final-form rulemaking has been clarified to state that a chiropractor is “a practitioner of chiropractic as defined in 75 Pa.C.S. § 1508.1(b) (relating to physical examinations) and 75 Pa.C.S. § 1518(g) (relating to reports on mental or physical disabilities or disorders).”

IRRC also recommended that the definition include a definition of “provider” as the term is used in several places throughout Chapter 83. The Pennsylvania Society of Physicians Assistants also submitted comments seeking clarification in the regulation as to which health care provider professionals were authorized to perform examinations and issue related reports. The Department included a definition of “health care provider” consistent with 75 Pa.C.S. § 1519, which includes licensed physicians, physician’s assistants and registered nurse practi-

tioners. The final-form rulemaking also uses the newly defined term throughout § 83.5 (relating to other physical and medical standards).

With respect to § 83.5(a)(1), IRRC noted that the subsection required the submission of the results of a Hemoglobin A1C (HbA1C) test and vision screening, but that the subsection did not indicate to what end the submission was required or what standards for the test results would be applicable. With respect to subsection (a)(1)(i), IRRC commented that the table which lists the ongoing examination requirements for drivers who experience a disqualifying diabetic episode was confusing. The Department agreed that the table was confusing and difficult to interpret as was the placement of the requirement for the submission of HbA1C and vision screening results. The table has been deleted from the final-form rulemaking and the entire subsection has been rewritten. The American Diabetes Association (ADA) also commented that results of an HbA1C test should not be established as a standard for disqualification of a driver. The ongoing examination requirements for drivers who have experienced a disqualifying diabetic episode are in narrative form in the final-form rulemaking and the submission of the HbA1C and vision screening results are more clearly identified as components of the examination. The significance of those results is determined by the treating health care provider who is charged with the certification that the individual has been episode free for the requisite period of time.

The ADA also commented that the inclusion of a standard of “hyperglycemic unawareness” was inappropriate. It was pointed out that a driver who tends not to be sensitive to the triggers of onset of a hyperglycemic episode can nevertheless drive safely with more frequent testing before driving or at regular intervals during long trips. The term has been deleted in the final-form rulemaking.

An additional letter of comment was received from the Pennsylvania Chiropractic Association lauding the inclusion of chiropractors in § 83.1 (relating to purpose) and offering no objection to the proposed rulemaking.

Persons and Entities Affected

This final-form rulemaking affects persons qualified or wishing to be qualified to drive, health care providers and the Pennsylvania State Police.

Fiscal Impact

Implementation of this final-form rulemaking will not require the expenditure of additional funds by the Commonwealth or local municipalities. This final-form rulemaking will not impose additional costs on the medical community. It should not impose additional costs to drivers because these examinations are part of normal diabetic care.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 28, 2008, the Department submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 3501, to IRRC and the Chairpersons of the Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 18, 2010, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 19, 2010, and approved the final-form rulemaking.

Effective Date

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

Sunset Provisions

The Department is not establishing a sunset date for these regulations, since these regulations are needed to administer provisions required under 75 Pa.C.S. The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for technical questions about this final-form rulemaking is R. Scott Shenk, Manager, Driver Safety Division, Bureau of Driver Licensing, 1101 South Front Street, 4th Floor, Harrisburg, PA 17104, (717) 772-2119.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 83, are amended by amending §§ 83.1, 83.2 and 83.5 to read as set forth in Annex A.

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

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

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

ALLEN D. BIEHLER, P. E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 5106 (September 4, 2010).)

Fiscal Note: Fiscal Note 18-410 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 83. PHYSICAL AND MENTAL CRITERIA, INCLUDING VISION STANDARDS RELATING TO THE LICENSING OF DRIVERS

§ 83.1. Purpose.

Section 1517(b) of the act (relating to medical advisory board) authorizes the Department to adopt physical and mental criteria, including vision standards, for licensing of drivers under Chapter 15 of the act (relating to licensing of drivers). These physical and mental criteria have been formulated by the Medical Advisory Board under the authority of sections 1517 and 1518 of the act (relating to medical advisory board and reports on mental or physical disabilities or disorders). In addition to their

use by the Department in connection with its responsibilities under Chapter 15 of the act, these physical and mental criteria shall be used by physicians, chiropractors, CRNPs and physician assistants in conducting physical examinations of applicants for learner's permits and driver's licenses and by physicians and other persons authorized to diagnose and treat disorders and disabilities covered in this chapter in determining whether a person examined by the provider should be reported to the Department as having a disorder affecting the ability of the person to drive safely.

§ 83.2. Definitions.

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

Act—75 Pa.C.S. § 101—9910 (relating to Vehicle Code).

Aura—An epileptic episode, sometimes experienced before or in lieu of a seizure, which does not alter an individual's ability to think clearly or interfere with an individual's mechanical or sensory ability to operate a motor vehicle.

CRNP—Certified registered nurse practitioner—A registered nurse licensed in this Commonwealth who is certified by the State Board of Nursing in a particular clinical specialty area and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with and under the direction of a physician licensed to practice medicine in this Commonwealth.

Chiropractor—A practitioner of chiropractic as defined in 75 Pa.C.S. § 1508.1(b) (relating to physical examinations) and 75 Pa.C.S. § 1518(g) (relating to reports on mental or physical disabilities or disorders).

Daylight—Hours between sunrise and sunset.

Department—The Department of Transportation of the Commonwealth.

HbA1C test—A Hemoglobin A1C test monitors the long-term control of diabetes mellitus.

Health care provider—A licensed physician, a CRNP, a physician assistant or a licensed psychologist, as described in 75 Pa.C.S. § 1519 (relating to determination of incompetency).

Hyperglycemia—When the level of glucose (sugar) in the blood is too high based on current guidelines established by the American Diabetes Association.

Hypoglycemia—When the level of glucose (sugar) in the blood is too low based on current guidelines established by the American Diabetes Association.

Hypoglycemic reactions—Different degrees of hypoglycemia which are classified as follows:

(i) *Mild*. Hypoglycemia that signals a blood glucose drop, which the individual can self correct with oral carbohydrates.

(ii) *Severe*. Hypoglycemia that requires outside intervention or assistance of others or that produces confusion, loss of attention or a loss of consciousness.

Licensed optometrist—A doctor of optometry licensed by the State Board of Optometry.

Licensed physician—A doctor of medicine licensed by the State Board of Medicine or a doctor of osteopathy licensed by the State Board of Osteopathic Medical Examiners.

Nocturnal—As used in relation to seizures, the term means occurring during sleep.

Seizure—A paroxysmal disruption of cerebral function characterized by altered consciousness, altered motor activity or behavior identified by a licensed physician as inappropriate for the individual.

Seizure disorder—Condition in which an individual has experienced a single seizure of electrically diagnosed epilepsy, or has experienced more than one seizure not including seizures resulting from an acute illness, intoxication, metabolic disorder, or trauma.

Symptomatic hyperglycemia—High glucose levels in the blood that have caused a loss of consciousness or an altered state of perception, including, but not limited to, decreased reaction time, impaired vision or hearing, or both, and confusion.

Telescopic lens—A telescopic low vision device.

Type I Diabetes mellitus—A chronic disease caused by the pancreas producing too little insulin to regulate blood sugar levels.

Type II Diabetes mellitus—A chronic disease marked by high levels of sugar in the blood caused by the body failing to respond correctly to natural insulin.

§ 83.5. Other physical and medical standards.

(a) *General disqualifications.* A person who has any of the following conditions will not be qualified to drive:

(1) Unstable diabetes mellitus leading to severe hypoglycemic reactions or symptomatic hyperglycemia unless there has been a continuous period of at least 6 months free from a disqualification in this paragraph. Once the diabetic condition has stabilized, and as long as the individual has not had another disqualifying episode within the last 6 months, the driving privilege may be restored. The individual shall submit to a diabetic examination, which includes an HbA1C test as well as a vision screening, and the treating health care provider shall certify on a completed form provided by the Department that the individual has been free from a disqualifying episode. Thereafter, the individual shall submit to a diabetic examination, which includes an HbA1C test as well as a vision screening, in accordance with the following schedule:

(i) Six months after the diabetic examination required in this paragraph, the individual shall submit to a follow-up diabetic examination and the treating health care provider shall certify, on a completed form provided by the Department, that the individual has been free from a disqualifying episode.

(ii) Twelve months after the previous diabetic examination, the individual shall submit to a follow-up diabetic examination and the treating health care provider shall certify, on a completed form provided by the Department, that the individual has been free from a disqualifying episode.

(iii) Twenty-four months after the previous diabetic examination, the individual shall submit to a follow-up diabetic examination and the treating health care provider shall certify, on a completed form provided by the Department, that the individual has been free from a disqualifying episode.

(iv) Forty-eight months after the previous diabetic examination, the individual shall submit to a follow-up diabetic examination and the treating health care provider shall certify, on a completed form provided by the Department, that the individual has been free from a disqualifying episode.

(v) Diabetic examination may be required more frequently if recommended by the treating health care provider.

(vi) Providing the condition of the individual remains under good control, the individual will not be required to submit to additional diabetic examinations.

(2) A waiver may be granted if an individual has been previously free from severe hypoglycemic reactions or symptomatic hyperglycemia for the preceding 6 months and the subsequent severe hypoglycemic reaction or symptomatic hyperglycemia occurred while the individual was under the treating health care provider's care, during or concurrent with a nonrecurring transient illness, toxic ingestion or metabolic imbalance. This waiver will only be granted if the treating health care provider submits written certification indicating it is a temporary condition or isolated incident not likely to recur.

(3) Cerebral vascular insufficiency or cardiovascular disease which, within the preceding 6 months, has resulted in one or more of the following:

- (i) Syncopal attack or loss of consciousness.
- (ii) Vertigo, paralysis or loss of qualifying visual fields.

(4) Periodic episodes of loss of consciousness which are of unknown etiology or not otherwise categorized, unless the person has been free from episode for the year immediately preceding.

* * * * *

[Pa.B. Doc. No. 10-1931. Filed for public inspection October 8, 2010, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 36]

Film Tax Credit

The Department of Community and Economic Development (Department), under the authority of section 1710-D of the Tax Reform Code of 1971 (act) (72 P. S. § 8701-D), proposes to add Chapter 36 (relating to film production tax credit). The purpose of this proposed rulemaking is to delineate actions necessary for financial compliance with the film production tax credit requirements and the use and transfer of tax credits.

Introduction

The act authorizes the Department to promulgate rules and regulations to interpret and make specific the provisions of the film production tax credit. Section 1710-D of the act states that the rules and regulations are to be promulgated "for the implementation of the provisions of this article." The purpose of Chapter 36 is to provide guidance and clarification concerning the ability to qualify, receive, utilize or transfer film production tax credits.

Fiscal Impact

The proposed rulemaking supplements the existing compliance framework. It does not create adverse fiscal impact and should benefit both the regulated community and State government through a reduction in errors, greater compliance and more efficiency in the administration of the film production tax credit.

Paperwork

The proposed rulemaking will not change existing paperwork requirements.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 23, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Urban Affairs Committee and the Senate Community Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Effective Date/Sunset Date

The proposed rulemaking will become effective 60 days after final-form publication in the *Pennsylvania Bulletin*. The regulations will be monitored on a regular basis and updated as needed.

Contact Person

Interested persons are invited to submit in writing, within 30 days from the date of publication of the proposed rulemaking, comments, suggestions or objections to Andrew Tanzer, Assistant Counsel, Office of Chief Counsel, Department of Community and Economic Development, Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, PA 17120, (717) 720-7317; or Jane Saul, Executive Director, Pennsylvania Film Office, 4th Floor, 400 North Street, Commonwealth Keystone Building, Harrisburg, PA 17120, (717) 783-3456.

AUSTIN J. BURKE,
Secretary

Fiscal Note: 4-92. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART I. GENERAL ADMINISTRATION

Subpart F. FILM PRODUCTION TAX CREDIT

Chap. 36.

FILM PRODUCTION TAX CREDIT

CHAPTER 36. FILM PRODUCTION TAX CREDIT

Sec.

36.1.	Definitions.
36.2.	Application.
36.3.	Special circumstances.
36.4.	Review.
36.5.	Contract.
36.6.	Financial compliance.
36.7.	Issuance of tax credits.
36.8.	Use and transfer of tax credits.

§ 36.1. Definitions.

The definitions in section 1702-D of the Tax Reform Code of 1971 (act) (72 P. S. § 8702-D), known as the Pennsylvania Film Production Tax Credit Law, are incorporated by reference. The following words and terms, when used in this chapter, have the following meanings, unless context clearly indicates otherwise:

CPA—A certified public accountant.

Pennsylvania Film Office—The office within the Department which administers the tax credit.

Single application for assistance—The Department's application for its funding programs.

§ 36.2. Application.

(a) Taxpayers shall provide the following information and documentation to the Pennsylvania Film Office to be considered for an award of a tax credit:

(1) A completed tax credit application available at the Pennsylvania Film Office web site at <http://www.filminpa.com>.

(2) A completed Single Application for Assistance available at the Department's web site at <http://www.newpa.com>. The Single Application of Assistance shall be submitted electronically.

(3) A budget top sheet in a format that provides side-by-side comparison of total production expenses and qualified Pennsylvania production expenses. Expenses not included in the budget will not be eligible for the award of tax credits.

(4) A statement indicating whether financing for the project has been secured or will be secured prior to the planned start date of principal photography in this Commonwealth. If financing is or will be in place, a taxpayer shall provide appropriate documentation and notify the Pennsylvania Film Office of any change in financing prior to completion of the project.

(5) Additional information and documentation requested during an interview, in person or by telephone, with the Pennsylvania Film Office to discuss the application prior to its submission. Interested taxpayers should request an appointment by calling (717) 783-FILM.

(6) Other information or documentation deemed appropriate by the Pennsylvania Film Office.

(b) Applications shall be mailed, faxed or sent by means of email to:

Pennsylvania Film Office
 Department of Community and Economic Development
 Commonwealth Keystone Building
 400 North Street, 4th Floor
 Harrisburg, PA 17120-0225
 Phone: (717) 783-FILM
 Fax: (717) 787-0687
 info@filminpa.com

§ 36.3. Special circumstances.

(a) *Productions lasting more than 12 months.* If a film is scheduled to be in production for more than 12 months, the taxpayer may, at the time of application, make a written request that a tax credit be issued on an annual basis rather than upon completion of production. If accepted, the request may not be withdrawn or changed. The Pennsylvania Film Office may grant the request, subject to the following conditions:

(1) The amount of the tax credit to be issued shall be limited to 25% of qualified Pennsylvania production expenses actually incurred during the relevant 12-month period.

(2) The taxpayer shall comply with the financial compliance provisions of this chapter with respect to each tax credit to be issued under § 36.6 (relating to financial compliance).

(b) *More than one film.* A taxpayer may submit one application for a slate of feature films, that is, three or more films each with a running time of more than 75 minutes. The application must be accompanied by a proposal detailing how the taxpayer will ensure that all of the films will be completed and will qualify for the tax credit.

(c) *Large awards.* If the total tax credit award for one approved application exceeds 20% of the film production tax credit allocation for that fiscal year, the Pennsylvania Film Office may award the tax credit for that application over succeeding years in each case not to exceed 20% of the allocation for that fiscal year.

§ 36.4. Review.

Applications will be considered in the order in which they are received. Applications will be reviewed for completeness and compliance with the law, regulations and guidelines. The Pennsylvania Film Office may consider the following criteria in its review of applications:

(1) The amount of qualifying Pennsylvania production expenses to be incurred by the taxpayer.

(2) The number of jobs in this Commonwealth to be created by the project.

(3) The number of days shooting in this Commonwealth.

(4) Whether the film is or will be fully financed prior to the start date.

(5) Whether distribution for the film has been secured.

(6) The number of job training opportunities in this Commonwealth to be generated by the film.

(7) Whether post production activity will take place in this Commonwealth.

(8) Other factors as the Pennsylvania Film Office may deem appropriate.

§ 36.5. Contract.

If an application for a tax credit is approved, the Pennsylvania Film Office will prepare and send a contract to the taxpayer. The contract will specify the maximum amount of eligible tax credits and the taxpayer's obligations including the following:

(1) Provide evidence that the taxpayer has registered to do business in this Commonwealth prior to the start date.

(2) Provide evidence that all personal service corporations or loan-out companies engaged by the taxpayer are incorporated in or have registered to do business in this Commonwealth prior to the start date or the date on which the company was engaged, whichever is later.

(3) Provide evidence of the start date. When the taxpayer demonstrates to the satisfaction of the Pennsylvania Film Office that exigent circumstances have caused an unavoidable delay in the commencement of production, the Pennsylvania Film Office may agree to extend the start date by up to an additional 120 days upon receipt of satisfactory evidence that the production will commence within the time of the extension.

(4) Provide the following reports to the Pennsylvania Film Office on a timely basis until completion of the production using the forms provided by the Pennsylvania Film Office:

(i) Projects of less than 3 months duration only need to submit an economic impact report. The economic impact report shall be submitted to the Pennsylvania Film Office within 60 days of completion of the production.

(ii) Projects with a duration of more than 3 months shall submit a monthly report in addition to an economic impact report.

(5) Provide an independently audited report of production expenses and all qualifying Pennsylvania production expenses upon delivery of the completed project to investors. The report shall be prepared in accordance with § 36.3 (relating to special circumstances).

(6) Include with the end credits, in each print and electronic version of the film, an acknowledgement of the support provided by the Pennsylvania Film Office and any applicable regional film office and the logo of the Pennsylvania Film Office.

(7) Other terms and conditions the Pennsylvania Film Office deems appropriate.

§ 36.6. Financial compliance.

(a) *Description.*

The taxpayer shall submit, through a CPA, an audit or a report on agreed upon procedures within 120 days after

completion of film unless a written request for an extension has been submitted to and approved by the Pennsylvania Film Office.

(b) *Selection of an independent CPA.* The audit or report on agreed upon procedures shall be performed by a properly licensed CPA. Prior approval of the CPA selection is not required unless the taxpayer is notified in writing by the Department.

(c) *Audit.*

(1) *Scope.* The audit must include all funds expended on the film under the Department contract and encompass the entire contract period. Other periods may also be specified at the discretion of the Department and the Department reserves the right to designate additional compliance factors.

(2) *Components.* The audit shall be done in accordance with the standards set forth in the Generally Accepted Auditing Standards, current revision, and include, as a minimum, the following:

- (i) Accountant's report.
- (ii) Financial statements, including the statement of total qualifying Pennsylvania expenses and total production expenses.
- (iii) Notes to the financial statements.
- (iv) Report of estimated Sales Tax and individual Gross Income Tax withheld related to the film.
- (v) Internal control report.
- (vi) Compliance report including all findings (that is, instances of noncompliance or deficiencies in the internal control structure), along with all attendant costs.

(d) *Report on agreed upon procedures.*

(1) *Scope.* If the taxpayer chooses to submit a report on agreed upon procedures, the CPA shall first submit a draft engagement letter to the Department before performing the procedures. The engagement letter should include the Department as a signing party and include the following procedures:

(i) The CPA shall apply the agreed-upon procedures to the expense accounts of the taxpayer for the preproduction, production and postproduction periods of the film in accordance with the standards established by the American Institute of Certified Public Accountants. Other periods may also be specified at the discretion of the Department and the Department reserves the right to designate additional compliance factors.

(ii) The CPA shall read and understand Article XVIII of the Tax Reform Code of 1971 (72 P. S. §§ 8701-D—8712-D), known as the Film Production Tax Credit Law, regulations, guidelines and other materials specified by the Pennsylvania Film Office.

(iii) The CPA shall test payments on a sample basis and verify the agreement of: the date the expense was incurred, the payee and the amount of the expense. The CPA shall also inspect the documentation for evidence of the expense being incurred in this Commonwealth if the invoice has been included in the report as a qualified Pennsylvania production expense in accordance with the Film Production Tax Credit Law, regulations and guidelines.

(iv) The CPA shall confirm with the Department of State whether the taxpayer and all loan-out companies involved in the production are registered to do business in this Commonwealth.

(v) The CPA shall calculate the amount of the credit at 25% of the qualified Pennsylvania production expenses.

(vi) The CPA shall review categories of expenses and payroll reports and prepare an estimate of Sales Taxes and individual Gross Income Taxes related to the project.

(2) *Components.* The agreed upon procedures engagement shall be performed in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and include, at a minimum, the following:

(i) The CPA's report on agreed upon procedures.

(ii) The statement of total qualifying Pennsylvania production expenses and total production expenses and computation of the tax credit.

(iii) A report of estimated Sales Tax and individual Gross Income Tax withheld related to the film.

(iv) A report containing an attestation that the taxpayer met the conditions in the Film Production Tax Credit Law, regulations, guidelines and the other materials provided by the Department.

(e) *Economic impact report.* In addition to the audit or report on agreed upon procedures, the taxpayer shall submit an economic impact report in the form provided by the Department.

(f) *Submission of materials.* Three copies of the audit or report on agreed upon procedures, economic impact report, application, engagement letter and award letter shall be submitted to the Pennsylvania Film Office within 120 days after the completion of the film unless a written request for an extension has been submitted to and approved by the Pennsylvania Film Office. The Pennsylvania Film Office will not issue a tax credit certificate until it has received, reviewed and approved the audit or report on agreed upon procedures and the economic impact report.

§ 36.7. Issuance of tax credits.

Tax credit certificates will be issued by the Department upon review and approval of the audit or report of agreed upon procedures, the economic impact report and other information requested by the Pennsylvania Film Office. Provided that the information submitted meets the financial reporting requirements of the regulations, a tax credit certificate will be issued within 45 days of receipt. The amount of the tax credit issued will not exceed the amount requested in the application. Tax credits can only be issued to entities that have a State Tax ID number. Entities not incorporated in this Commonwealth shall register to do business in this Commonwealth to obtain a State Tax ID number.

§ 36.8. Use and transfer of tax credits.

(a) *Taxpayer's qualified tax liability.* The tax credit shall be applied first to the taxpayer's qualified tax for the taxpayer's tax year in which the tax credit is awarded. The tax credit cannot be applied against the liability until the return for the year has been filed.

(b) *Options.* If the taxpayer's qualified tax liability is less than the tax credits awarded to it, the taxpayer may do one of the following:

(1) Carry forward the unused portion of the tax credit for a period not to exceed 3 additional tax years and may use the tax credit to offset qualified tax liabilities during those years.

(2) Apply to the Pennsylvania Film Office for approval for the sale, transfer or assignment of all or a portion of the tax credit to another entity for use against qualified tax liabilities.

(c) *Tax returns.* A taxpayer shall file all required State tax reports and returns for the years up to and including the date of the award letter and pay any balance of State tax due as determined at settlement, assessment or determination by the Department of Revenue before the tax credit can be used and before an application for sale or assignment will be approved.

(d) *Transfer application review.* Applications for the transfer of all or a portion of the tax credit shall be submitted to the Pennsylvania Film Office for review. If the application is complete in all respects, the Pennsylvania Film Office will approve and forward the application to the Department of Revenue for review and processing.

(e) *Effective date of transfer.* Subject to the statutory requirements relating to the payment of all outstanding qualified tax liabilities for the year in which the tax credit is awarded, a taxpayer may transfer unused tax credits. The effective taxable year for the transferred tax credits will be the date of approval of the application for transfer by the Department, the tax report filing date or the date the seller becomes compliant, whichever is latest.

(f) *Limits.* The amount of the tax credit that a transferee may use against any one qualified tax liability may not exceed 50% of the qualified tax liability for the taxable year. A transferee may not carry back or obtain a refund of unused tax credits. After submitting an application to transfer a tax credit, a taxpayer may no longer use that portion of the tax credit to offset a qualified tax liability unless the application is denied by the Pennsylvania Film Office or withdrawn by the taxpayer.

(g) *Doing business in this Commonwealth.* Tax credits can only be awarded, issued, sold or assigned to entities that have a State Tax ID number. Entities not incorporated in this Commonwealth shall register to do business in this Commonwealth to obtain a State Tax ID number. The Department requires that the taxpayer and all loan-out companies involved in the production are registered to do business in this Commonwealth.

[Pa.B. Doc. No. 10-1932. Filed for public inspection October 8, 2010, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]

[L-2009-2123673/57-278]

Call Recording for Telephone Companies

The Pennsylvania Public Utility Commission, on April 15, 2010, adopted a proposed rulemaking order which establishes regulatory conditions under which telephone companies may record customer communications for training and quality of service purposes.

Executive Summary

This proposed rulemaking was prompted by requests in 2007-2008 from eight local exchange carriers (LECs) requesting waivers of § 63.137 (relating to service moni-

toring and related matters) to allow them to record telephone calls between their customers and employees for training and quality of service purposes. Currently, under § 63.137, telecommunications carriers cannot record customer contact calls for any reason. Other utilities do not have restrictions and are able to record calls for the training and quality of service purposes. The eight LECs were granted individual waivers and the Commission established terms and conditions for a temporary blanket waiver of § 63.137(2) in a Blanket Waiver Order at Docket No. M-2008-2074891.

The instant Proposed Rulemaking Order entered on April 19, 2010, at Docket No. L-2009-2123673 proposes to amend § 63.137 to remove the prohibition against call recording and to establish parameters for permitting call recording of customer contact calls for training and quality of service purposes. Additionally, the proposed rulemaking would make the ministerial edit of changing "employee" to "employee."

This Proposed Rulemaking Order seeks to benefit every LEC by allowing uniformity across multistate service territories and establishing consistency in utility regulation. The jurisdictional utilities affected by the regulation will benefit from the regulation as they will know what is expected of them if they choose to record calls. The regulations are designed to help the utility improve training methods and quality of service provided to customers by their employees. Better trained utility employees and improved quality of service benefits utility customers. The regulations are not financially or unduly burdensome upon the jurisdictional utilities because the utilities can continue to operate without choosing to record calls. Furthermore, the utilities operating under the individual waivers and under the blanket waiver have not noted problems with the terms of those waivers that would be codified as regulations under the proposed rulemaking. Utilities that have not requested a waiver or opted-into the blanket waiver will be saved the time and expense of such a request.

The Commission will benefit from a more uniform approach to the methods that utilities may use to improve quality of service and to ensure adequate employee training. Additionally, it will save time and money by eliminating the need to process individual requests for waivers or for opting into the blanket waiver.

Public Meeting held
April 15, 2010

Commissioners Present: James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; Robert F. Powelson; Wayne E. Gardner

Proposed Rulemaking: Elimination of the Call Recording Prohibition in 52 Pa. Code § 63.137 and Establishment of Regulations to Govern Call Recording for Telephone Companies;
Doc. No. L-2009-2123673

Proposed Rulemaking Order

By the Commission:

On July 29, 2009, at Docket No. M-2008-2074891 (Blanket Waiver Order), the Pennsylvania Public Utility Commission adopted a blanket partial waiver of the call recording prohibition in § 63.137(2) regarding telephone companies.¹ By this order, we issue for comment proposed regulations that would modify the regulatory prohibition against call recording by telephone companies and would

¹ The term "telephone company" as defined in § 63.132 incorporates all jurisdictional telephone companies:
Telephone company—A public utility which provides regulated telecommunication services subject to Commission jurisdiction.

establish regulatory conditions under which telephone companies may record customer communications. Additionally, we shall propose the ministerial edit of changing “employee” to “employee” throughout § 63.137.

Background

§ 63.137(2)

Section 63.137(2) was promulgated in an effort to balance customer privacy interests with the business interests of the telephone companies.² To establish this balance, telephone company call center supervisors are allowed to monitor communications between customers and utility service representatives through “live” or “real-time” listening in, but calls may not be recorded. Substantively, § 63.137(2) provides, in relevant part, as follows:

(2) *Service evaluation and monitoring.* The telephone company may evaluate and monitor those aspects of its operations, including customer communications, necessary for the provision of service to its customers. *The recording of conversations is prohibited.*

(Emphasis added). The remainder of § 63.137(2) explains, in several subparts, the types of service evaluation and monitoring of customer telephone calls a telephone company may perform in the provision of service to its customers. No other jurisdictional utility industry is subject to similar customer or call-center call-recording prohibitions under our regulations.

On November 20, 2008, we entered a Tentative Order at Docket No. M-2008-2074891 soliciting comments on proposed guidelines for a blanket waiver to avoid addressing waiver requests on a piecemeal basis in the future. The Tentative Order proposed a process whereby a telephone company may petition the Commission for a 1-year partial waiver of § 63.137(2) and up to two 1-year extensions, subject to proposed uniform terms and conditions applicable to operations under the temporary partial waiver.

The Tentative Order provided notice to the public, in general, and to the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and the Office of Trial Staff (OTS), in particular. The Pennsylvania Telephone Association (PTA) filed the only comments, emphatically asserting that continued requirement of individual petitions with a 1-year limitation and two renewals would not be consistent with a “blanket” waiver. PTA suggested the Commission handle this matter as it handled a similar matter in *Rulemaking re: Provision of Bundled Service Package Plans*, Docket No. L-00060179 (July 3, 2006) (BSP Rulemaking Order), in which the Commission established conditions under which a blanket waiver was granted regarding § 64.21. Companies were required to agree to comply with the specific conditions to qualify for the automatic waiver.

By order entered July 29, 2009, we found merit in the PTA’s comments and adopted a blanket partial waiver of § 63.137(2) permitting call recording under certain circumstances. Specifically, the Blanket Waiver Order permits telephone companies to record customer calls for quality of service and training purposes subject to the following terms and conditions:³

- A carrier seeking to operate under the Blanket Waiver Order is required to file notice with the Secretary of the Commission, with a copy to the Commission’s

Bureau of Consumer Services, of its intent to do so prior to beginning operations, giving at least 30 days notice to the Commission, and must also provide its customers with a bill insert (or make an equivalent customer contact) explaining the call recording process and the opt-out process to customers at least 30 days before beginning call recording operations.

- A carrier with a pre-existing waiver that had not commenced actual recording of customer calls under the pre-existing waiver could only subsequently begin call recording under the Blanket Waiver Order terms and conditions.

- A carrier that began call recording of customer calls without a previously granted specific waiver or under the Blanket Waiver Order had 20 days to come into compliance with that order or had to discontinue call recording.

- Telephone companies must provide a prerecorded message to the effect that the call may be monitored or recorded for training or quality control purposes.

- The prerecorded message must advise callers that they have the option to discontinue the call and to request a call back from an unrecorded line and must also provide instructions on how to request a call back prior to any aspect of the call being recorded.

- Recorded telephone calls may be used solely for the purpose of training or measuring and improving service quality.

- Recorded calls must be erased after a 90-day (or shorter) retention period.

- All other provisions of § 63.137 remain in full force and effect.

When we established terms and conditions for a temporary partial waiver of § 63.137(2) in the Blanket Waiver Order, we noted that we would take under consideration at another docket the matter of opening a rulemaking to eliminate the call recording prohibition. This order begins that proceeding.

Existing waivers

Eight petitioning LECs received waivers allowing them to record, for training and quality of service purposes, customer calls to their call centers.⁴ Additionally, several telephone companies have provided notice that they have opted to operate under the Blanket Waiver Order. The amendments to § 63.137(2) proposed herein are consistent with the waivers granted to the petitioning LECs and to telephone companies operating under the Blanket Waiver Order and would require no further action on their part to remain in compliance.

Discussion

Currently, § 63.137(2) prohibits telephone companies except those with specific waivers and those operating under the Blanket Waiver Order from recording customer contact calls. The strikingly similar arguments presented by the petitioning LECs and by PTA in support of a blanket waiver, coupled with the differences in the specific features and permissions requested by those petitioning LECs, lead us to conclude that this Commission should institute a generic rulemaking on this matter. Among other arguments supporting a change in the

² The provisions of § 63.137(2) were issued under 66 Pa.C.S. §§ 501 and 1501 and were adopted July 24, 1992, effective September 23, 1992, 22 Pa.B. 3892.

³ Telephone companies may still petition individually for a partial temporary waiver of § 63.137(2).

⁴ Verizon Pennsylvania, Inc. and Verizon North, Inc. (Verizon LECs) were granted partial waivers at Docket No. P-00072333 (December 20, 2007). Full Service Computing Co. and Full Service Network LP (Full Service LECs) were granted partial waivers at Docket No. P-2008-2020446 (May 5, 2008). Buffalo Valley Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company, and D&E Systems, Inc., were granted partial waivers of at Docket No. P-2008-2051138 (September 23, 2008).

regulations, the petitioning LECs noted that telephone companies are the only class of jurisdictional utilities prohibited from recording calls for any purpose including training and measuring and improving service quality. Other utilities, as well as other businesses and this Commission, routinely record calls for service quality purposes within the bounds of applicable laws concerning wiretaps and trap and trace devices.

Throughout our individual waiver and the blanket waiver deliberations, we have consistently rejected the use of the calls recorded for “evidentiary” purposes. We propose to continue to do so, because we believe that permitting calls, taped under the mantle of training and quality service improvement purposes and then used for an evidentiary purpose, may violate 18 Pa.C.S. Chapter 57 (relating to Wiretapping and Electronic Surveillance Control Act) (Wiretap Act). None of the petitioning LECs that were granted partial waivers of § 63.137(2) have been granted permission to use the recorded calls for evidentiary purposes, and the Blanket Waiver Order is consistent on this point. We see no reason to change our position here on this matter in the context of a proposed rulemaking. Accordingly, the proposed revisions to existing regulations are also consistent on this point.

The Wiretap Act provides, in pertinent part, that:

It shall not be unlawful and no prior court approval shall be required under this chapter for:

* * * * *

(6) Personnel of any public utility to record telephone conversations with utility customers or the general public relating to receiving and dispatching of emergency and service calls provided there is, during such recording, a periodic warning which indicates to the parties to the conversation that the call is being recorded.

* * * * *

(15) The personnel of a business engaged in telephone marketing or telephone customer service by means of wire, oral or electronic communication to intercept such marketing or customer service communications where such interception is made for the sole purpose of training, quality control or monitoring by the business, provided that one party involved in the communications has consented to such intercept. Any communications recorded pursuant to this paragraph may only be used by the business for the purpose of training or quality control. Unless otherwise required by Federal or State law, communications recorded pursuant to this paragraph shall be destroyed within one year from the date of recording.

18 Pa.C.S. § 5704(6) and (15) (relating to exceptions to prohibition of interception and disclosure of communications).

On a going-forward basis, we propose changes to § 63.137(2) as set forth in Annex A. These changes are consistent with the analysis underlying the Blanket Waiver Order. It is expressly noted that the amendments proposed to § 63.137(2) would neither enlarge nor limit, in any way, a jurisdictional utility’s obligations or a customer’s protections under either to the Wiretap Act or to any applicable Federal statutes or regulations.

In addition to the substantive changes proposed, we also intend to address an inconsistency within § 63.137. Both “employee” and “employeee” are used in various places in § 63.137. In an effort to provide consistency, we

propose to change the spelling of “employee” to “employeee” to reflect the generally accepted form of the term.

Conclusion

The use of a regulation to address the recording of customer calls for telephone companies not only will increase efficiency in industry operations but also will facilitate the entry and participation of competitors in the telecommunications market by allowing each to standardize operations throughout its National service territories. Additionally, various telephone companies in this Commonwealth have had the ability to record customer contact calls since late 2007 under either to specific waivers or to the blanket waiver process, and we have not seen any problems or customer complaints arise. The blanket waiver process has been in place since late July 2009. The telephone companies have not requested any alterations to the terms of the blanket waiver. Thus, it appears that the terms of the Blanket Waiver Order have provided the telecommunications industry with a workable tool to balance any concerns relative to quality of customer service, employee education, and privacy. The purpose of this proposed rulemaking is to develop and to codify these standards for the telecommunications market in this Commonwealth. We anticipate and appreciate industry comments on this proposed rulemaking.

Accordingly, under sections 501, 504, 2203(12), 2205, and 2208 of the Public Utility Code, 66 Pa.C.S. §§ 501, 504, 2203(12), 2205 and 2208; 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 there under at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P. S. § 732.204(b); section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5; and section 612 of The Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated there under at 4 Pa. Code §§ 7.231—7.234, we are proposing to amend our regulations as set forth in Annex A; *Therefore,*

It Is Ordered That:

1. A rulemaking docket shall be opened to amend § 63.137(2) as set forth in Annex A.
2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor’s Budget Office for review of fiscal impact.
3. The Secretary shall submit this order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
5. Persons may either eFile or file an original and 15 copies of written comments referencing the docket number of the proposed regulations within 45 days of publication of notice of this order in the *Pennsylvania Bulletin*. Instructions for eFiling may be found at <http://www.puc.state.pa.us/efiling/default.aspx>. A paper original accompanied by the e-confirmation page or a cover letter with the eFiling Confirmation Number must be provided to the Secretary of the Commission within 3 days of an eFiling being submitted. If not eFiling, then the original and the requisite number of copies must be filed with the Pennsylvania Public Utility Commission, Attn.: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. To facilitate posting, filed comments also should be forwarded by means of e-mail, in Word or Word-compatible format, to Tawana

Dean, tadean@state.pa.us; Melissa Derr, mderr@state.pa.us; Louise Fink Smith, finksmith@state.pa.us; and Cyndi Page, cypage@state.pa.us.

6. A copy of this order and Annex A shall be served on the PTA, the OCA, the OSBA and the OTS and a copy of this order and Annex A shall be posted on the Commission's web site.

7. The contact persons for this proposed rulemaking are Tawana Dean, tadean@state.pa.us, Bureau of Consumer Services; Melissa Derr, mderr@state.pa.us, Bureau of Fixed Utility Services; and Louise Fink Smith, finksmith@state.pa.us, Law Bureau.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-278. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter J. CONFIDENTIALITY OF CUSTOMER COMMUNICATIONS AND INFORMATION

§ 63.137. Service monitoring and related matters.

This section sets forth procedures for service evaluation and monitoring; use of pen registers and trap and trace devices; and responses to government requests for assistance in conducting wiretap, pen register, trap and trace and other types of investigations.

* * * * *

(2) *Service evaluation and monitoring.* The telephone company may evaluate and monitor those aspects of its operations, including customer communications, necessary for the provision of service to its customers. The recording of conversations **between telephone company employees and customers, potential customers, or applicants is [prohibited] permitted only as provided in this paragraph. All other recording of conversations is prohibited.**

(i) *Service evaluation.* A telephone company may engage in the sampling of customer communications by telephone company **[employes] employees** or automated equipment to measure service quality. This sampling of customer communications shall be kept to the minimum needed to measure service quality. Service evaluation facilities may not have monitoring access points outside official evaluation quarters. Entry to evaluation quarters shall be strictly controlled. During periods when evaluation quarters are not in use or when otherwise considered appropriate, the quarters shall be securely locked or the equipment rendered inoperative or accessible only by authorized personnel. Access to service

evaluation documents that contain individual **[employe] employee**-customer contact information shall be closely guarded to protect the customer's privacy.

(ii) *Maintenance monitoring.* A telephone company may engage in the monitoring of telephone company facilities by an **[employe] employee** entering the circuit to listen and carry out tests to determine whether noise, "cross-talk," improper amplification, reproduction or other problems may exist. This includes the mandatory routines covered by equipment test lists, tracing of circuits for corrective action and other similar activities. The monitoring may not interfere with the voice or data information being carried.

(iii) *Administrative monitoring.* A telephone company may engage in the monitoring of telephone company **[employe] employee** contacts with customers and with other **[employes] employees** which have a direct bearing on the quality of service provided to customers. The monitoring equipment shall be secure at all times and only used by authorized persons. The monitoring may be performed from a remote location. When the equipment is in a remote location and is not in use, it shall be secured or made inoperative or accessible only by authorized personnel.

(iv) *Call recording.* A telephone company may record calls by employees to or from customers, potential customers, or applicants only under the following circumstances:

(A) A telephone company shall give notice to its customers with a bill insert or equivalent customer contact explaining the call recording process and the opt-out process at least 30 days before commencing call recording or to new customers at the time service commences.

(B) A telephone company shall provide callers calling a company telephone number equipped to record customer or prospective customer calls with a prerecorded message that the call may be monitored or recorded for training or quality control purposes.

(C) The prerecorded message must advise callers that they have the option to discontinue the call and to request a call back on an unrecorded line and provide instructions on how to request a call back prior to any aspect of the call being recorded.

(D) Recorded telephone calls shall be used solely for the purpose of training or measuring and improving service quality and may not be used for formal or informal evidentiary purposes.

(E) Recorded calls shall be erased after a 90-day or shorter retention period.

* * * * *

[Pa.B. Doc. No. 10-1933. Filed for public inspection October 8, 2010, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Application Period for Grants Under the Direct Farm Sales Grant Program; 2011 Project Year

An application period has begun for grants under the Direct Farm Sales Grant Program (Program) administered by the Department of Agriculture (Department), Bureau of Food Distribution (Bureau). For the 2011 Project Year, the application period is October 12, 2010, to November 23, 2010. Information about the Program and application forms can be accessed at the Department web site at www.agriculture.state.pa.us under the Bureau or by contacting the Bureau at (800) 468-2433, ask to speak with Sandy Hopple.

In summary, the Program provides funds to Commonwealth-based businesses that manage or operate a farm stand or farmers' markets, nonprofit organizations, farmers and local governments for projects intended to promote new or existing farmers' markets. Projects must pertain to specialty crops. The maximum grant amount per farm stand or farmers' market location shall be \$7,500 and applicants shall be expected to provide 25% of the approved grant amount in matching funds or in-kinds goods or services. The anticipated date for the award of grants and notice thereof is expected to be on or before January 31, 2011. The application, work plan and budget should reflect March 1, 2011, as the project start date and the project completion date will be September 30, 2011.

Applications for the Program will be accepted by the Department beginning Tuesday, October 12, 2010, and continue through Tuesday, November 23, 2010. Applications to be hand-delivered must be received by 4 p.m. in the Bureau on Tuesday, November 23, 2010, the closing date. Applications which are mailed must be postmarked no later than Tuesday, November 23, 2010, and received no later than December 1, 2010.

Completed applications should be addressed to or delivered to Department of Agriculture, Bureau of Food Distribution, Direct Farm Sales Grant Program, 2301 North Cameron Street, Room 401, Harrisburg, PA 17110-9408.

RUSSELL C. REDDING,
Secretary

[Pa.B. Doc. No. 10-1934. Filed for public inspection October 8, 2010, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Nominations for the Pennsylvania Recreational Trails Advisory Board

The Department of Conservation and Natural Resources (Department) is accepting nominations through November 12, 2010, for three new appointments to the Pennsylvania Recreational Trails Advisory Board (Board).

The Board was created on October 29, 1992, in accordance with the Transportation Equity Act for the 21st Century and as amended under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

The Board consists of one member from each of the following nine recreational trail user organizations: Hiking, Cross-Country Skiing, Off-Highway Motorcycling, Snowmobiling, Horseback Riding, All-Terrain Vehicle Driving, Bicycling, Four-Wheel Driving and Water Trails. One member also represents physically challenged individuals.

The Board's main responsibilities include advising the Department on the use of Federal trails funding in this Commonwealth, reviewing and ranking trail project applications and presenting an annual report to the Secretary on the accomplishments of the preceding Federal fiscal year, including recommendations for changes.

Nominations for the three new appointees are to be made from individuals representing the following trail user organizations: Four-Wheel Driving, Horseback Riding and Cross-Country Skiing.

Nominations must be submitted to the Department by November 12, 2010. Appointments will be made by the Secretary of the Department. Appointees will serve for 3 consecutive years.

To obtain a nomination form, contact Pennsylvania Recreational Trails Program, P. O. Box 8475, Harrisburg, PA 17105-8475, (717) 787-7672, loross@state.pa.us.

For more information about the Department, visit them through the Commonwealth homepage at www.state.pa.us, or visit the Department directly at www.dcnr.state.pa.us.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Lori Ross at (717) 787-7672 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

JOHN QUIGLEY,
Secretary

[Pa.B. Doc. No. 10-1935. Filed for public inspection October 8, 2010, 9:00 a.m.]

DEPARTMENT OF EDUCATION

2011 Reassignment of Duquesne High School Students

Under section 1607.1(a)(1) of the Public School Code of 1949 (code) (24 P.S. § 16-1607.1(a)(1)) regarding distressed school districts and student attendance in other districts, in 2007, then-Secretary Gerald Zahorchak designated two school districts to accept high school students from the Duquesne City School District (Duquesne) on a tuition basis, effective at the beginning of the 2007-2008 school year. The two designated school districts were the East Allegheny School District (East Allegheny) and the West Mifflin Area School District (West Mifflin).

As required by 24 P. S. § 16-1607.1(c), the Department of Education (Department) provides the following information regarding the assignment of Duquesne's current 8th grade students. Duquesne shall assign students who complete the 8th grade in 2011 to the East Allegheny and West Mifflin Districts for the 2011-2012 school year.

The per pupil tuition rates that the designated districts shall receive, for the 2010-2011 school year, are \$9,404.70 for East Allegheny and \$9,669.96 for West Mifflin Area High School. The per pupil tuition rates that the designated districts shall receive, for the 2011-2012 school year, will be established when the data become available in the summer of 2011.

High School Selection—Important Dates

January 27, 2011—West Mifflin Area High School Student Tour

February 1, 2011—East Allegheny High School Student Tour

February 2, 2011—Parent Information Meeting, Duquesne Education Center

February 9, 2011, at 3 p.m.—Deadline to return School Selection Cards to Duquesne Education Center Elementary Office

February 11, 2011—Lottery (if necessary)

Week of February 14, 2011—Parents notified of their child's placement

Student Selection Process per Legislative Mandate

1. Which high schools are available?

Duquesne students who complete the 8th grade in 2011 will attend West Mifflin Area High School or East Allegheny High School beginning the fall of 2011.

2. Who is eligible to attend either of these high schools?

All Duquesne residents who want to continue in public school for the 2011-2012 school year are eligible to participate in the selection process—this includes current 8th grade students who will be entering 9th grade in the fall of 2011.

Private, religious or charter school students first need to register as Duquesne students at the Duquesne Education Center office to be eligible to take part in the selection process.

3. How will the selection process work?

After reviewing the information provided about each school, students must select either West Mifflin Area High School or East Allegheny High School as their school choice.

Each student must complete a selection card and return it to the Duquesne Education Center office by February 9, 2011, at 3 p.m.

Younger siblings of students already enrolled in a high school will get preference for that school.

If the number of students selecting a school exceeds the determined enrollment number, then all interested students selecting that school will be placed in a lottery.

4. Selecting a high school will not be determined on a first come first serve basis.

Every student who completes and returns the school selection card during the selection process has an equal chance of getting his or her first choice school.

5. How many students will be assigned to each high school?

Section 1607.1(a)(1) of the code establishes a cap related to the maximum number of students that shall be assigned to a designated school district.

6. How will the lottery work?

If necessary, the lottery drawing will take place on Friday, February 11, 2011, at a public meeting with community members in attendance. The lottery process will be explained before the lottery takes place.

7. How does the selection work for siblings?

Siblings entering the 9th grade will attend the same high school that their older brother or sister has chosen unless a parent or guardian specifies otherwise. For this purpose, in order to be considered for sibling status, applicants must meet one of the following criteria:

a. Brothers or sisters of the same parent(s) or legal guardian(s).

b. Children that reside in the same household and have the same legal guardian.

* Legal proof of guardianship and residence is required for both instances.

8. What happens if a student does not receive his or her "first choice" school?

If a student is involved in the lottery drawing and does not receive the school he or she selected, then that student may choose to be put on a waiting list for their first choice school. A student's number on the waiting list will be determined by the number he or she draws in the lottery.

9. What about students who enroll in Duquesne after the selection process has taken place?

Students transferring into Duquesne after the selection process has concluded will be given a choice between West Mifflin and East Allegheny. If a student's first choice school already has students assigned up to its determined enrollment level, then he or she will be assigned to the other school. If a student wants to be placed on a waiting list for his or her first choice school, then his or her name will be added to the bottom of the waiting list below the students who took part in the selection process.

10. What happens if a student hands in a selection card after the scheduling period or does not return a selection card?

If a student does not complete and return the school selection card during the selection process, then the student will be assigned to his or her first choice only if space is available because the determined enrollment number has not been reached. If space is not available in the student's first choice school, then the student will be assigned to the other school.

THOMAS E. GLUCK,
Acting Secretary

[Pa.B. Doc. No. 10-1936. Filed for public inspection October 8, 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 related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs) (hereinafter referred to as "applications"). This Notice is provided in accordance with regulations at 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of the Pennsylvania Clean Streams Law, 35 P.S. §§ 691.1 *et seq.*, and the federal Clean Water Act, 33 USCA §§ 1251 *et seq.*

Location	Permit Authority	Application Type or Category
Section I	NPDES	Renewals
Section II	NPDES	New or Amendment
Section III	WQM	Industrial, Sewage or Animal waste; discharge into groundwater
Section IV	NPDES	MS4 Individual Permit
Section V	NPDES	MS4 Permit Waiver
Section VI	NPDES	Individual Permit Stormwater Construction
Section VII	NPDES	NOI for Coverage under NPDES General Permits

For NPDES renewal applications listed in Section I, the Department of Environmental Protection (Department) has made a tentative determination to re-issue 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 listed in Section II, as well as applications for MS4 Individual Permits, and Individual Stormwater Construction Permits listed in Sections IV and VI, the Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on any of these NPDES applications are invited to submit a statement to the contact office noted above the application, within 30 days from the date of this public notice. Persons wishing to comment on any WQM permit application are invited to submit a statement, to the office noted above 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. All comment submittals should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for a public hearing on applications, and 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 any public hearings are held.

Persons with a disability, who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information, should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

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

NPDES No. (Type)	Facility Name & Address	County & Municipality	Stream Name (Watershed No.)	EPA Waived Y/N?
PA0063428 (Sewage)	Blue Mountain Ski Area 1660 Blue Mt. Drive Palmerton, PA 18071	Carbon County Lower Towamensing Township	Buckwha Creek, High Quality Cold Water Fishes Aquashicola Creek, Trout Stocking Creek Watershed 2B	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>
PA0028894 (Sew)	Fairfield Area School District 4840 Fairfield Road Fairfield, PA 17320-9200	Adams County / Hamiltonban Township	UNT Spring Run / 13-D	Y
PA0083984 (Sew)	Ranch House Restaurant 133 Old Trail Road Duncannon, PA 17020	Perry County / Watts Township	Susquehanna River / 6C	Y
PA0086487 (IW)	PPG Industries, Inc. 400 Park Drive Carlisle, PA 17015-9271	Cumberland County South Middleton Township	SW Ditch to Yellow Breeches Creek / 7-E	Y

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

<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>
PA0032514 (Sewage)	Denton Hill State Park 5661 US 6 West Coudersport, PA 16915	Potter County Ulysses Township	Ninemile Run (9-A)	Y
PAS804806 (Stormwater)	Davidson Brothers, Inc. 450 Runville Road Bellefonte, PA 16823-4715	Centre County Boggs Township	Wallace Run (9-C)	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>
PA0238881 (Sewage)	Joe E. Brown SFTF 9089 Old Waterford Road Erie, PA 16509	Erie County Greene Township	Unnamed Tributary of Walnut Creek (15-A)	Y

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

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

PA0082589, Sewage, SIC Code 4952, **Fairview Township York County**, 599 Lewisberry Road, New Cumberland, PA 17070-2399. Facility Name: Fairview Township Southern STP. This existing facility is located in Fairview Township, **York County**.

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

The receiving stream(s), unnamed tributary to Fishing Creek is located in State Water Plan watershed 7-E and is classified for warm water fishes, migratory fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.50 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Weekly Average</i>	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH	XXX	XXX	6.0	XXX	XXX	9.0
Dissolved Oxygen	XXX	XXX	5.0	XXX	XXX	XXX
Total Residual Chlorine	XXX	XXX	XXX	0.19	XXX	0.63
CBOD5	104	167 Wkly Avg	XXX	25	40	50
BOD5	Report	Report	XXX	Report	XXX	XXX
Raw Sewage Influent	Report	Report	XXX	Report	XXX	XXX
Total Suspended Solids	Report	Report	XXX	Report	XXX	XXX
Raw Sewage Influent	Report	Report	XXX	Report	XXX	XXX
Total Suspended Solids	125	187 Wkly Avg	XXX	30	45	60

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Weekly Average</i>	
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	2,000 Geo Mean	XXX	XXX
Ammonia-Nitrogen May 1 - Oct 31	7.9	XXX	XXX	1.9	XXX	3.8
Ammonia-Nitrogen Nov 1 - Apr 30	23	XXX	XXX	5.7	XXX	11
Total Phosphorus	8.3	XXX	XXX	2.0	XXX	4.0
Total Copper	0.075	XXX	XXX	0.018	XXX	0.04
Total Zinc	0.62	XXX	XXX	0.15	XXX	0.37

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 (lb/day)</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	9,132			
Net Total Phosphorus (Interim)	Report	Report			
Net Total Phosphorus (Final)	Report	1,218			

- 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 October 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, 2013. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until September 30, 2012.

- ** Total Annual Ammonia Load will be required to be reported on the Supplemental DMR - Annual Nutrient Summary by November 28, 2010.

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.

PA0261572, Sewage, SIC Code 8051, **Mount Hope Nazarene Retirement Community**, 3026 Mount Hope Home Road, Manheim, PA 17545-9529. Facility Name: Mt Hope Nazarene Retirement Comm. This proposed facility is located in Rapho Township, **Lancaster County**.

Description of Proposed Activity: The application is for a new NPDES permit for a new discharge of treated Sewage.

The receiving stream(s), Brubaker Run is located in State Water Plan watershed 7G and is classified for Trout Stocking, Migratory Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.012 MGD.

<i>Parameters</i>	<i>Mass (lb/day)</i>			<i>Concentration (mg/l)</i>		<i>Instant. Maximum</i>
	<i>Average Monthly</i>	<i>Daily Maximum</i>	<i>Minimum</i>	<i>Average Monthly</i>	<i>Daily 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
CBOD5	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60

<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>
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	2,000 Geo Mean	XXX	XXX
Ammonia-Nitrogen May 1 - Oct 31	XXX	XXX	XXX	14	XXX	28
Total Phosphorus	XXX	XXX	XXX	3.0	XXX	6.0

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			
Total Nitrogen		Report			
Total Phosphorus		Report			
Net Total Nitrogen (Interim)	Report	Report			
Net Total Nitrogen (Final)	Report	605			
Net Total Phosphorus (Interim)	Report	Report			
Net Total Phosphorus (Final)	Report	0			

* 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 October 1, 2011. 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, 2012. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until September 30, 2011.

** Total Annual Ammonia Load will be required to be reported on the Supplemental DMR - Annual Nutrient Summary by November 28, 2011.

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect.

PA0261505, Industrial Waste, SIC Code 2875, 2879, **Lebanon Seaboard Corp.**, 1600 East Cumberland Street, Lebanon, PA 17042-8323. Facility Name: Lebanon Seaboard Corporation. This proposed facility is located in Lebanon City, **Lebanon County**.

Description of Proposed Activity: The application is for a new NPDES permit for an existing discharge of treated Industrial Waste.

The receiving stream(s), Drainage swale to Unnamed Tributary to Quittapahilla Creek, is located in State Water Plan watershed 7-D and is classified for trout stocking fishes, migratory fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.00072 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>
Chlorobenzene	XXX	XXX	XXX	.05	0.10	0.12
pH	XXX	XXX	Report	XXX	XXX	Report

The proposed effluent limits for Outfall S01 are:

<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>Annual Average</i>	<i>Daily Maximum</i>	<i>Instant. Maximum</i>
pH (S.U.)	XXX	XXX	XXX	Report	XXX	XXX
CBOD5	XXX	XXX	XXX	Report	XXX	XXX
Chemical Oxygen Demand	XXX	XXX	XXX	Report	XXX	XXX
Total Suspended Solids	XXX	XXX	XXX	Report	XXX	XXX

Parameters	Mass (lb/day)			Concentration (mg/l)		
	Average Monthly	Daily Maximum	Minimum	Annual Average	Daily Maximum	Instant. Maximum
Oil and Grease	XXX	XXX	XXX	Report	XXX	XXX
Total Kjeldahl Nitrogen	XXX	XXX	XXX	Report	XXX	XXX
Total Phosphorus	XXX	XXX	XXX	Report	XXX	XXX
Total Iron	XXX	XXX	XXX	Report	XXX	XXX

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

- Requirements applicable to stormwater

You may make an appointment to review the DEP files on this case by calling the File Review Coordinator at 717-705-4732.

The EPA Waiver is in effect

Northcentral Regional Office: Regional Water Management Program Manager, 208 W Third Street Suite 101, Williamsport, PA 17701-6448, Telephone: 570.327.0532.

PA0028266, Sewage, SIC Code 4952, **Borough of Troy**, 110 Elmira Street, Troy, PA 16947-1202. Facility Name: Troy Borough Wastewater Treatment Plant. This existing facility is located in the Borough of Troy, **Bradford 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 4-C and is classified for Trout Stocking, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.4 MGD.

Parameters	Mass Units (lbs/day)			Concentrations (mg/L)			Minimum Measurement Frequency	Required Sample Type
	Average Monthly	Weekly Average	Minimum	Average Monthly	Weekly Average	Instant. Maximum		
Flow (MGD)	Report	Report Daily Max					Continuous	Metered
pH (S.U.)			6.0			9.0	1/day	Grab
TRC				0.4		1.3	1/day	Grab
CBOD5								
May 1 - Oct 31	50	83		15	25	30	1/week	8 Hr. Comp.
CBOD5								
Nov 1 - Apr 30	83	133		25	40	50	1/week	8 Hr. Comp.
TSS	100	150		30	45	60	1/week	8 Hr. Comp.
Fecal Coliform	200 colonies/100 ml as a geometric mean, nor greater than							
May 1 - Sep 30	1,000 colonies/100 ml in more than 10 percent of the samples tested						1/week	Grab
Fecal Coliform	2000 colonies/100 ml as a geometric mean						1/week	Grab
Ammonia-N								
May 1 - Oct 31	5.0	6.5		1.5	2.0	4.5	1/week	8-Hr. Comp.
Ammonia-N								
Nov 1 - May 31	15	21		4.5	6.5	13.5	1/week	8-Hr. Comp.
Dissolved Oxygen			6.0				1/day	Grab

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

Parameters	Mass Units (lbs/day)			Concentrations (mg/L)			Minimum Measurement Frequency	Required Sample Type
	Monthly	Annual	Minimum	Average Monthly	Maximum	Maximum		
Ammonia-N	Report			Report			1/week	8 Hr. Comp.
Kjeldahl-N	Report			Report			1/week	8 Hr. Comp.
Nitrate-Nitrite as N	Report			Report			1/week	8 Hr. Comp.
Total Nitrogen (Interim)	Report	Report		Report			1/month	Calculate
Net Total Nitrogen (Final)	Report	7,306					1/month	Calculate
Total Phosphorus (Interim)	Report	Report		Report			1/week	8 Hr. Comp.
Net Total Phosphorus (Final)	Report	974					1/month	Calculate

PA0028665, Sewage, SIC Code 4952, **Jersey Shore Borough**, 232 Smith Street, PO Box 526, Jersey Shore, PA 17740. Facility Name: Jersey Shore Borough WWTP. This existing facility is located in Jersey Shore Borough, **Lycoming 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), Unnamed Tributary to West Branch Susquehanna River and West Branch Susquehanna River, is located in State Water Plan watershed 10-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 1.05 MGD:

Parameters	Mass (lb/day)		Minimum	Concentration (mg/l)		Instant. Maximum
	Average Monthly	Weekly Average		Average Monthly	Weekly Average	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.6
CBOD5	219	350	XXX	25	40	50
Total Suspended Solids	263	394	XXX	30	45	60
Fecal Coliform (CFU/100 ml)				200		
May 1 - Sep 30	XXX	XXX	XXX	Geo Mean	XXX	XXX
Fecal Coliform (CFU/100 ml)				2000		
Oct 1 - Apr 30	XXX	XXX	XXX	Geo Mean	XXX	XXX

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

Parameters	Mass (lbs)		Minimum	Concentration (mg/l)	
	Monthly	Annual		Monthly Average	Maximum
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	19178			
Net Total Phosphorus (Interim)	Report	Report			
Net Total Phosphorus (Final)	Report	2557			

* 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 10/1/2012. 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, 2013. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until September 30, 2012.

** Total Annual Ammonia Load will be required to be reported on the Supplemental DMR - Annual Nutrient Summary by November 28, 2013.

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

The EPA Waiver is not in effect.

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; 412-442-4000

PA0218448, Sewage, SIC Code 4952, **Whitethorn Homeowner's Association**, 230 Shaw Court, New Alexandria, PA 15670. Facility Name: Whitethorn STP. This existing facility is located in Salem Township, **Westmoreland 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), Unnamed Tributary of Whitethorn Creek, is located in State Water Plan watershed 18-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 0.011 MGD.

Parameters	Mass (lb/day)		Minimum	Concentration (mg/l)		Instant. Maximum
	Average Monthly	Daily Maximum		Average Monthly	Daily Maximum	
Flow (MGD)	0.011	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
CBOD5	XXX	XXX	XXX	25	XXX	50
Total Suspended Solids	XXX	XXX	XXX	30	XXX	60
Fecal Coliform (CFU/100 ml)				200		
May 1 - Sep 30	XXX	XXX	XXX	Geo Mean	XXX	1000
Fecal Coliform (CFU/100 ml)				2000		
Oct 1 - Apr 30	XXX	XXX	XXX	Geo Mean	XXX	10000
Ammonia-Nitrogen				7.5	XXX	15.0
May 1 - Oct 31	XXX	XXX	XXX			
Ammonia-Nitrogen				22.5	XXX	45.0
Nov 1 - Apr 30	XXX	XXX	XXX			

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 Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, Telephone: 814.332.6942.

PA0023931, Sewage, SIC Code 4952, **Cambridge Area Joint Authority**, 161 Carringer Street, Cambridge Springs, PA 16403-1005. Facility Name: Cambridge Area Joint Authority STP. This existing facility is located in Cambridge Springs Borough, **Crawford County**.

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

The receiving streams, French Creek (Outfalls 001 & 005) and an unnamed tributary to French Creek (Outfall 004), are located in State Water Plan watershed 16-A and are classified for warm water fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 1.3 MGD.

Parameters	Mass (lb/day)		Minimum	Concentration (mg/l)		Instant. Maximum
	Average Monthly	Weekly Average		Average Monthly	Weekly Average	
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Total Residual Chlorine	XXX	XXX	XXX	0.5	XXX	1.6
CBOD5	271	434	XXX	25	40	50
Total Suspended Solids	325	488	XXX	30	45	60
Fecal Coliform (CFU/100 ml)				200		
May 1 - Sep 30	XXX	XXX	XXX	Geo Mean	XXX	XXX
Fecal Coliform (CFU/100 ml)				2000		
Oct 1 - Apr 30	XXX	XXX	XXX	Geo Mean	XXX	XXX
Total Phosphorus	21.7	XXX	XXX	2	XXX	4

The proposed effluent limits for Outfalls 004 & 005 are based on a design flow of N/A MGD.

Parameters	Mass (lb/day)		Minimum	Concentration (mg/l)		Instant. Maximum
	Average Monthly	Weekly Average		Average Monthly	Weekly Average	

The discharge(s) shall consist of uncontaminated stormwater runoff from the treatment plant site.

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

- Sanitary Sewer Overflows
- Residual Chlorine Minimization
- Stormwater Best Management Practices
- Whole Effluent Toxicity testing for the renewal permit

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.

PA0263753, Sewage, SIC Code 8800, **Gaerttner Anita M**, 8105 Edinboro Road, Erie, PA 16509-4468. Facility Name: Anita M Gaerttner SFTF. This proposed facility is located in Summit Township, **Erie 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 to Thomas Run, is located in State Water Plan watershed 15 and is classified for High Quality Waters - Cold Water and Migratory Fishes; aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.

Parameters	Mass (lb/day)			Concentration (mg/l)		Instant. Maximum
	Average Monthly	Daily Maximum	Minimum	Average Monthly	Daily Maximum	
Flow (MGD)	Report	XXX	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
CBOD5	XXX	XXX	XXX	10	XXX	20
Total Suspended Solids	XXX	XXX	XXX	10	XXX	20
Fecal Coliform (CFU/100 ml)				200		
UV Transmittance ($\mu\text{w}/\text{cm}^2$)	XXX	XXX	XXX	Geo Mean report	XXX	XXX

The EPA Waiver is in effect.

III. WQM Industrial Waste and Sewerage Applications under the Clean Streams Law (35 P. S. §§ 691.1—691.1001)

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

WQM Permit No. 6306407, Sewerage, **Hanover Township Sewer Authority**, 116 Steubenville Pike, Paris, PA 15021

This existing facility is located in Hanover Township, **Washington County**

Description of Proposed Action/Activity: Application for permit amendment.

WQM Permit No. 3010401, Sewerage, **Dry Tavern Sewer Authority**, PO Box 194, Rices Landing, PA 15357

This proposed facility is located in Jefferson Township, **Greene County**

Description of Proposed Action/Activity: Application for the construction and operation of a sewer extension and pump station.

WQM Permit No. 0205411-A1, Sewerage, **Bethel Park Municipal Authority**, 5100 West Library Road, Bethel Park, PA 15102

This existing facility is located in South Park Township, **Allegheny County**

Description of Proposed Action/Activity: Application for permit amendment.

WQM Permit No. 6571411-A1, Sewerage, **West Newton Borough**, 112 South Water Street, West Newton, PA 15089

This existing facility is located in West Newton Borough, **Westmoreland County**

Description of Proposed Action/Activity: Application for permit amendment.

The Pennsylvania Infrastructure Investment Authority (Pennvest) which administers Pennsylvania's State Revolving Fund has been identified as a possible funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

WQM Permit No. 1110411, Sewerage, **Highland Sewer & Water Authority**, 120 Tank Drive, Johnstown, PA 15904

This proposed facility is located in Stonycreek Township and Geistown Borough, **Cambria County**

Description of Proposed Action/Activity: Application for the construction and operation of equalization facility, flow control structures and relief sewer.

WQM Permit No. 6304406-A2, Sewerage, **Center-West Joint Sewer Authority**, PO Box 542, Brownsville, PA 15417

This existing facility is located in Centerville & West Brownsville Boroughs, **Washington County**

Description of Proposed Action/Activity: Application for permit amendment.

WQM Permit No. WQG016183, Sewerage, **Kelly's Sleepy Hollow**, 2042 Brace Road, Victor, NY 14564-9327

This proposed facility is located in Unity Township, **Westmoreland County**

Description of Proposed Action/Activity: Application for the construction and operation of a small flow sewage treatment facility.

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

WQM Permit No. 1097409, Sewerage, **Amendment No. 1, Peter Rabbit Campground Inc.**, 153 Lilac Lane, Slippery Rock, PA 16057

This proposed facility is located in Brady Township, **Butler County**.

Description of Proposed Action/Activity: The applicant is requesting an amendment to the facility's Water Quality Management Permit to install a flow equalization tank with a grinder pump, to eliminate flow surges and improve STP performance.

WQM Permit No. 3779402, Sewerage, **Amendment No. 1, Rose Point Park Campground Company**, 314 Rose Point Road, New Castle, PA 16101

This proposed facility is located in Slippery Rock Township, **Lawrence County**.

Description of Proposed Action/Activity: Applicant requests an Amendment to the facility's WQM Permit to modify/upgrade the existing sewage treatment facilities, to rectify past effluent non-compliance and other maintenance issues.

IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

V. Applications for NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI01 151026	Sheridan Construction Company 1578 McDaniel Drive West Chester, PA 1930	Chester	Penn Township	Big Elk Creek (HQ-TSF)
PAI01 151027	Southern Homes, LP 55 Country Club Drive Downingtown, PA 19355	Chester	West Vincent Township	Pickering Creek (HQ-TSF)
PAI01 231001	Eastern Metal Recycling Terminal, Inc. 1500 South 6th Street Camden, NJ 08101	Delaware	Eddystone Borough	Delaware River (WWF-MF)

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

Northampton Co. Conservation District: 14 Gracedale Ave., Nazareth, PA 18064, 610-746-1971

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024810002	Mike Keiser PENNDOT Engineering District 5-0 1002 Hamilton Street Allentown PA 18101	Northampton	Boro of Hellertown City of Bethlehem	Saucon Creek (CWF, MF) Saucon Creek (HQ-CWF, MF)
PAI024804022R	Tom Kishbaugh Ashview Development Co LLC 226 East Dell Road Bath, PA 18014	Northampton	Moore Twp Bushkill Twp	Bushkill Creek (HQ-CWF, MF)
PAI024805003R	Charles Tuskes CMC Development Corp. 4511 Falmer Drive Bethlehem, PA	Northampton	Bushkill Twp	Bushkill Creek (HQ-CWF, MF)

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024510009	Middle Smithfield Materials, Inc. PO Box 674 Bushkill, PA 18324	Monroe	Middle Smithfield Twp.	UNT to Bushkill Creek (HQ-CWF, MF)

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>
PAI030705001-R	Charles E. Pillar, Jr., CM Blair County Airport Authority 2 Airport Drive Martinsburg, PA 16662	Blair	North Woodbury Township	Frankstown Branch Plum Creek/HQ-CWF

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Beaver County Conservation District, 156 Cowpath Road, Aliquippa, PA 15001 (724-378-1701)

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050410004	Lindy Paving, Inc 586 Northgate Circle New Castle, PA 16105	Beaver	Big Beaver Borough	Unnamed Tributary to Jordan Run (HQ-CWF)

Washington County Conservation District, 602 Courthouse Square, Washington, PA 15301 (724-228-6774)

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI056310011	Washington County Council on Economic Development 40 South Main Street Lower Level Washington, PA 15301	Washington	Hanover Twp.	Unnamed Tributary to Raccoon Creek (WFF)

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

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

STATE CONSERVATION COMMISSION

NUTRIENT MANAGEMENT PLANS RELATED TO APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFO)

The State Conservation Commission has taken the following actions on previously received applications for nutrient management plans under the act of July 6, 2005 (Act 38 of 2005, 3 Pa.C.S. §§ 501—522) (hereinafter referred to as Act 38), for agricultural operations that have or anticipate submitting applications for new, amended or renewed NPDES permits, or Notices of Intent for coverage under a general permit, for CAFOs, under 25 Pa. Code Chapter 92. This notice is provided in accordance with 25 Pa. Code Chapter 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

Persons aggrieved by any action may appeal under section 517 of Act 38, 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, Rachael 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 any right of appeal beyond that permitted by applicable statutes and decision law.

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

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for 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>
Smiling Porker Farms 676 Granger Road Morris, PA 16938	Lycoming	435	537.5	Finishing swine	HQ-CWF—Huges Run	Renewal
Rodney Lane 750 Woodard Road Harrison Valley, PA 16927	Potter	668.2	963.5	Dairy, Swine, Beef	None	Renewal

CAFO Nutrient Management Plans Received

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

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>Application or Action</i>
Arthur Astle Astle Farm 560 Lancaster Pike Oxford, PA 19363	Chester	8.0	1116.0	Swine	NA	Update

PUBLIC WATER SUPPLY (PWS) PERMIT

Pursuant to the Pennsylvania Safe Drinking Water Act, the following parties have applied for a public water supply permit to construct or substantially modify a public water system.

Persons wishing to comment on the permit application are invited to submit a statement to the office listed above 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 this application. Comment responses should include the name, address, and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed above the application and available for public review. Arrangements for inspection and copying information should be made with the office listed above 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 above the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1-800-654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17)

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

Application No. 0910526 Public Water Supply

Applicant	Solebury School
Township	Solebury
County	Bucks
Responsible Official	Mr. Douglass Haigh 6832 Phillips Mill Road New Hope, PA 18938
Type of Facility	PWS
Consulting Engineer	Castle Valley Consultants 10 Beulah Road New Britain, PA 18901
Application Received Date	August 30, 2010
Description of Action	Permit approval of an existing water supply system that serves Solebury School.

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

Application No. 5410505, Public Water Supply.

Applicant	Orwigsburg Borough Municipal Authority 209 North Warren St Orwigsburg, Pa
[Township or Borough]	Orwigsburg Borough, Schuylkill Co.
Responsible Official	Michael Lonergan, Borough Manager
Type of Facility	Public Water System
Consulting Engineer	McCarthy Engineering Associates 1121 Snyder Rd West Lawn, Pa

Application Received Date 9/14/10
 Description of Action The construction of a booster station to serve the pine creek development.

Application No. 4010509, Public Water Supply.
 Applicant **Aqua Pennsylvania Inc.**
 (Sunrise Estates Water System)
 1 Aqua Way
 White Haven, Pa
 [Township or Borough] Factoryville Boro., **Wyoming Co.**
 Responsible Official Mark Talarico
 Type of Facility Public Water System
 Consulting Engineer Pennoni Associates Inc
 100 North Wilkes Barre Blvd
 Wilkes Barre Pa

Application Received Date 9/9/10
 Description of Action The replacement of pumps at the sunrise estates booster station with ones operating on a variable frequency drive.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

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 Public Water Supply
 Consulting Engineer Charles A Kehew II, P.E.
 James R. Holley & Assoc., Inc.
 18 South George St.
 York, PA 17401
 Application Received: 9/7/2010
 Description of Action Installation of softening system, nitrate treatment system, sodium hypochlorite disinfection system and lead and copper corrosion control facilities.

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

Application No. 5910502—Construction Public Water Supply.
 Applicant **Leonard Harrison State Park**
 [Township or Borough] Wellsboro Borough
 County **Tioga**

Responsible Official John Norbeck, Director
 PA DCNR—Bureau of State Parks
 Leonard Harrison State Park
 P. O. Box 8551
 Harrisburg, PA 17105

Type of Facility Public Water Supply—Construction
 Consulting Engineer Shawn Beeler, P.E.
 Bureau of Facility Design & Construction
 P. O. Box 8551
 Harrisburg, PA 17105
 Application Received September 23, 2010
 Description of Action Treatment of the parks existing surface water (spring) by NSF approved cartridge filters.

Application No. 5910503—Construction, Public Water Supply.

Applicant **Mansfield University**
 [Township or Borough] Mansfield
 County **Tioga**
 Responsible Official Richard Nelson, Utility Park Manager
 Mansfield University of PA
 Brooks Maintenance Building
 115 Sherwood Street
 Mansfield, PA 16933
 Type of Facility Public Water Supply—Construction
 Consulting Engineer Mark Glenn, P.E., President
 Gwin, Dobson & Foreman, Inc.
 3121 Fairway Drive
 Altoona, PA 16602
 Application Received September 23, 2010
 Description of Action Extend a waterline into Mansfield Boro. Mun. Auth's water distribution system. Project will blend University water with low DBP Auth water in the University's contact clearwell. The blending operation will reduce byproduct formation potential.

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

Permit No. 0210519, Public Water Supply.
 Applicant **Municipal Authority of the Borough of Oakmont**
 721 Allegheny Avenue
 Oakmont, PA 15139
 [Township or Borough] Penn Hills
 Responsible Official John Dunlap, General Manager
 Municipal Authority of the Borough of Oakmont
 721 Allegheny Avenue
 Oakmont, PA 15139
 Type of Facility Water system

Consulting Engineer	NIRA Consulting Engineers, Inc. 950 Fifth Avenue Coraopolis, PA 15108	[Township or Borough]	Jennerstown Borough and Jenner Township
Application Received Date	September 20, 2010	Responsible Official	Jennerstown Municipal Authority, PO Box 99, Jennerstown, PA 15547
Description of Action	Cleaning, coating and repairs; and installation of a new mixer system to the Crescent Hills water storage tank.	Type of Facility	Water system
		Consulting Engineer	The EADS Group, Inc. 450 Aberdeen Drive Somerset, PA 15501
Permit No. 0210520	Public Water Supply.	Application Received Date	September 16, 2010
Applicant	Pennsylvania American Water Company 800 West Hersheypark Drive PO Box 888 Hershey, PA 17033	Description of Action	Demonstration of 4-log treatment, groundwater rule
[Township or Borough]	Baldwin Borough and the City of Pittsburgh	Application No. 5610513GWR, Minor Amendment.	
Responsible Official	David R. Kaufman, P.E., Vice-President-Engineering, Pennsylvania American Water Company 800 West Hersheypark Drive PO Box 888 Hershey, PA 17033	Applicant	Municipal Authority of the Borough of Boswell, 300 Stonycreek Street, Boswell, PA 15531
Type of Facility	Water system	[Township or Borough]	Boswell Borough
Consulting Engineer	Gannett Fleming, Inc. 207 Senate Avenue Camp Hill, PA 17011-2316	Responsible Official	Municipal Authority of the Borough of Boswell, 300 Stonycreek Street, Boswell, PA 15531
Application Received Date	September 16, 2010	Type of Facility	Water system
Description of Action	Construction of the 60 MGD High Service Pump Station at the Hays Mine water treatment plant.	Consulting Engineer	The EADS Group, Inc. 450 Aberdeen Drive Somerset, PA 15501
		Application Received Date	September 16, 2010
		Description of Action	Demonstration of 4-log treatment, groundwater rule

MINOR AMENDMENT

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

Application No. 5610511GWR, Minor Amendment.

Applicant	Hidden Valley Utility Services PO Box 4038 Hidden Valley, PA 15502
[Township or Borough]	Hidden Valley
Responsible Official	James Kettler Hidden Valley Utility Services PO Box 4038 Hidden Valley, PA 15502
Type of Facility	Water system
Consulting Engineer	
Application Received Date	August 30, 2010
Description of Action	Demonstration of 4-log treatment, groundwater rule

Application No. 5610512GWR, Minor Amendment.

Applicant	Jennerstown Municipal Authority, PO Box 99, Jennerstown, PA 15547
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Application No. 2610506GWR, Minor Amendment.

Applicant	Mountain Water Association, PO Box 257, Fairchance, PA 15436
[Township or Borough]	Georges Township
Responsible Official	Mountain Water Association, PO Box 257, Fairchance, PA 15436
Type of Facility	Water system
Consulting Engineer	Fayette Engineering Company Inc. 2200 University Drive P.O. Box 1030 Uniontown, PA 15401-1030
Application Received Date	September 16, 2010
Description of Action	Demonstration of 4-log treatment, groundwater rule

Application No. 5610514GWR, Minor Amendment.

Applicant	Cairnbrook Improvement Association, PO Box 264, Cairnbrook, PA 15924
[Township or Borough]	Shade Township

Responsible Official Cairnbrook Improvement Association,
PO Box 264,
Cairnbrook, PA 15924

Type of Facility Water system

Consulting Engineer

Application Received September 14, 2010
Date

Description of Action Demonstration of 4-log
treatment, groundwater rule

Application No. 5610515GWR, Minor Amendment.

Applicant **Small Water Association,**
PO Box 124,
Cairnbrook, PA 15924

[Township or Borough] Shade Township

Responsible Official Small Water Association,
PO Box 124,
Cairnbrook, PA 15924

Type of Facility Water system

Consulting Engineer

Application Received September 14, 2010
Date

Description of Action Demonstration of 4-log
treatment, groundwater rule

Application No. 2610507GWR, Minor Amendment.

Applicant **National Pike Water Authority,**
PO Box 10,
Markleysburg, PA 15459

[Township or Borough] Henry Clay Township

Responsible Official McMillen Engineering
115 Wayland Smith Drive
Uniontown, PA 15401

Type of Facility Water system

Consulting Engineer McMillen Engineering
115 Wayland Smith Drive
Uniontown, PA 15401

Application Received September 17, 2010
Date

Description of Action Demonstration of 4-log
treatment, groundwater rule

Application No. 1188511T1, Minor Amendment.

Applicant **Robert DeVore & Annette DeVore,**
691 Beaver Valley Road,
Patton, PA 16668

[Township or Borough] Clearfield Township

Responsible Official Robert DeVore &
Annette DeVore,
691 Beaver Valley Road,
Patton, PA 16668

Type of Facility Water system

Consulting Engineer

Application Received September 22, 2010
Date

Description of Action Transfer of ownership of
Captain's Quarters.

Application No. 5610518GWR, Minor Amendment.

Applicant **Seven Springs Municipal Authority,**
290 Lagoon Lane,
Champion, PA 15622

[Township or Borough] Champion

Responsible Official Seven Springs Municipal
Authority,
290 Lagoon Lane,
Champion, PA 15622

Type of Facility Water system

Consulting Engineer Widmer Engineering
225 West Crawford Avenue
Connellsville, PA 15425

Application Received September 23, 2010
Date

Description of Action Demonstration of 4-log
treatment, groundwater rule

Application No. 6510503GWR, Minor Amendment.

Applicant **Ligonier Township Municipal Authority,**
1 Municipal Park Drive,
Ligonier, PA 15658

[Township or Borough] Ligonier Township

Responsible Official Ligonier Township Municipal
Authority,
1 Municipal Park Drive,
Ligonier, PA 15658

Type of Facility Water system

Consulting Engineer

Application Received September 27, 2010
Date

Description of Action Demonstration of 4-log
treatment, groundwater rule

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

Application No. 1694502-MA2, Minor Amendment

Applicant **Knox Borough Water Treatment Plant**

Township or Borough Knox Borough and Beaver
Township/Clarion County

Responsible Official Jack E. Bish, Council President

Type of Facility Public Water System

Application Received 09/01/2010
Date

Description of Action Install UP point of entry water
treatment system inside existing
commercial building, Sharp
Shopper.

Application No. 1694502-MA3, Minor Amendment

Applicant **Knox Borough Water Treatment Plant**

Township or Borough Knox Borough and Beaver
Township/Clarion County

Responsible Official Jack E. Bish, Council President

Type of Facility Public Water System

Application Received 09/01/2010
Date

Description of Action Install UP point of entry water treatment system inside existing commercial building, Swartfager Welding.

WATER ALLOCATIONS

Applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the Acquisition of Rights to Divert Waters of this Commonwealth

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

WA4-92C, Water Allocations—Revised. Midland Borough Municipal Authority, 946 Railroad Avenue, Midland, PA 15059, **Beaver County**. The applicant is requesting the right withdraw 10 million gallons of water per day from the Ohio River - 5 million gallons for drinking water purposes from either the existing intake at Allegheny Ludlum or the Borough's proposed intake and 5 million gallons for non-potable use from the Borough's proposed intake.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908)

Sections 302, 303, 304 and 305 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard, or who intend to remediate a site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site, and a description of the intended future use of the site. A person who demonstrates attainment of one, or a combination of the cleanup standards, or who receives approval of a special industrial area remediation identified under the Act, will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under Sections 304(n)(1)(ii) and 305(c)(2) of the Act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a

summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the site(s) identified below, 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 below. During this comment period the municipality may request that the person identified below, 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, please contact the Environmental Cleanup Program Manager in the Department of Environmental Protection Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at 1-(800) 654-5984.

The Department of Environmental Protection has received the following Notice(s) of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401

Rosemore Shopping Center, Warminster Township, **Bucks County**. Michelle Flowers, REPSG, 601 Kingsessing Avenue Suite 201, Philadelphia, PA 19142, Mark Kuczynski, REPSG, 601 Kingsessing Avenue Suite 201, Philadelphia, PA 19142 on behalf of Andy Levine, Davisville Center Inc, 111 East Presidential Blvd. Feasterville, PA 19053 has submitted a Notice of Intent to Remediate. Groundwater and soil at the site has been impacted the release of chlorinated solvents. The site is currently operation as a shopping center containing multiple retail and service stores. Future use of the site is not planned to change.

Manoa Shopping Center, Township of Haverford, **Delaware County**. Michael Potts, ENVIRON International Corporation, 214 Carnegie Center, Princeton, NJ 08540 on behalf of Valerie Chuse, Manoa Shopping Center Associates, L.P., 1305 West Chester Pike, Havertown, PA 19083 has submitted a Notice of Intent to Remediate. Groundwater at the site has been impacted with the release of other organics. The future use of the site will remain in use for commercial uses into the foreseeable future. A summary of the Notice to Intent to Remediate was reported to have been published in *The Philadelphia Daily News* on August 19, 2010.

Reynolds Packaging, Borough of Downingtown, **Chester County**. Michael Welsh, Welsh Environmental Inc, 131 Clearview Drive, Downingtown, PA 19335, David Watson, Reynolds Packaging, LLC, 6641 West Bread Street, Richmond, VA 23230 on behalf of Eli Kahn/Jack Loew, CAG, Associates, 55 County Club Drive, Downingtown, PA 19335 has submitted a Notice of Intent to Remediate. Groundwater and soil at site has been impacted with the release of chlorinated solvents. The future use of the site will remain the same.

Hartman Residence, Upper Darby Township, **Montgomery County**. Richard D. Trimpi, Trimpi Associates, 1635 Old Plains Road, Pennsburg, PA 18073, Ty Gawlik, State Farm, P. O. Box 8061, Ballston, Spa, NY 12020-8061 on behalf of Eric and Hillary Hartman, 355 Camp Hill Road, Fort Washington, PA 19034 has submitted a

Notice of Intent to Remediate. Soil at the site has been impacted with the release of no. 2 fuel oil. The future use of the site will remain the same. A summary of the Notice of Intent to Remediate was reported to have been published in *The Ambler Gazette* on August 11, 2010.

Marcus Hook Elementary School, Marcus Hook Borough, **Delaware County**. Barbara Lippmann, Environmental Control Systems, Inc, 950 Sussex Boulevard, Broomall, PA 19008, Lisa Strobridge, Aquaterra Technologies, Inc. 122 South Church Street, West Chester, PA 19381 on behalf of Jay Keever, Chichester School District, P. O. Box 2100, Boothwyn, PA 19061 has submitted a Notice of Intent to Remediate. Groundwater and soil at the site has been impacted with the release of mtbe. The future use of the site will remain the same.

GTS-Welco Quakertown Facility, Richland Township, **Bucks County**. I. Scott Renneisen/Tammy L.M. Hessler, Synergy Environmental Inc. 155 Railroad Plaza, 1st floor, Royersford, PA 19468, James Anderson, GTS-Welco, 5272 Tilgham Street, Allentown, PA 18104 on behalf of Bryan Gentry, Gentry Family Realty, LP, 1800 North 11th Street, Reading PA 19604 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted with the release of leaded gasoline. The future use of the site will remain the same.

Verizon Doylestown Work Center, Plumstead Township, **Bucks County**. Sean M. Damon, Langan Engineering & Environmental, P. O. Box 1569, Doylestown, PA 18901, James McElman, P. G, Verizon Environmental Management, 7701 East Telecom Drive, MC:FLTDSB1M, Temple Terrace, FL 33637 on behalf of Nick Nickerson, Central Bucks School District, 320 West Swamp Road, Doylestown, PA 18901 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted with the release of inorganics. The facility will be utilized as a depot in the future by the Central Bucks School District. A summary of the Notice to Intent to Remediate was to have been reported in *The Intelligencer* on August 15, 2010.

PECO Bristol MGP, Borough of Bristol, **Bucks County**. George H. Kei, URS Corporation, 335 Commerce Drive Suite 300, Fort Washington, PA 19034, Crystal Kirby, URS Corporation, 335 Commerce Drive Suite 300, Fort Washington, PA 19034 on behalf of Mike Heffron, PECO Energy Company, 2301 Market Street, S7-2, Philadelphia, PA 19103 has submitted a Notice of Intent to Remediate. Groundwater and soil at the site has been impacted with release of pah. The anticipated future use of the site is non-residential as a substation. A summary of the Notice of Intent to Remediate was to have been reported in *The Bristol Pilot* on August 26, 2010.

MRB Investment, Spring City, Borough, **Chester County**. Stephan Brower, Environmental Standard, Inc, 140 Valley Forge Road, P. O. Box 810, Valley Forge PA 19482 on behalf of Charles McFarland, MRB Investments, 141 south Main Street, P. O. Box, 369, Spring City, PA 19475 has submitted a Notice of Intent to Remediate. Groundwater and soil at the site has been impacted with the release of lead and unleaded gasoline, arsenic, chromium, benzo and 2-hexanone. The current use of the property is non-residential. Future intended uses of the property is proposed to be residential. A summary of the Notice of Intent to Remediate was to have been published in *The Mercury* on September 8, 2010.

Bristol Steel Treat Company, Bristol Borough, **Bucks County**. Samuel J. Kucia, Environmental Consulting Inc. 500 East Washington Street, Suite 375,

Norristown, PA 19401, Andrew D. Hubley, Environmental Consulting Inc. 500 East Washington Street, Suite 375, Norristown, PA 19401 on behalf of Robert White, Bucks County Redevelopment Authority, Suite 1, One North Wilson Avenue, Bristol, PA 19007 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted with the release of chlorinate solvents. The proposed future use of the property will be an emergency boat launch.

Biddle Residence, Hilltown Township, **Bucks County**. Greg Ronczka, Shaw Environmental & Infrastructure, Inc., 2790 Mosside Boulevard, Monroeville, PA 15146, Gary Ecott, Petro Heating Oil Service, 650 Knowles Avenue, Southampton, PA 18966 on behalf of Larry Biddle, 2803 Diamond Street, Hilltown, PA 18927 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted with the release of no. 2 fuel oil. The future use of the site will remain the same.

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

ICI Americas (Expert Management, Inc.), near Route 443 West, West Penn Township, **Schuylkill County**. Mark T. Smith, SSM Group, Inc., P. O. Box 6307, 1047 N. Park Road, Reading, PA 19610-0307 has submitted a Notice of Intent to Remediate (on behalf of his clients, Kenneth Steigerwalt, 980 Clamtown Road, Tamaqua, PA 18252 and Dennis D'Angelo, 111 Oak Terrace Road, New Ringgold, PA 17960), concerning the remediation of groundwater found to have been impacted by PCE, TCE, and their associated breakdown components and heavy metals as a result of historical chemical operations at the site. The applicant proposes to remediate the site to meet the Site-Specific Standard. No current industrial activity exists at the site, and all of the buildings have been demolished. Redevelopment plans for the site do not exist at this time. A summary of the Notice of Intent to Remediate is expected to be published in the local newspaper serving the general area sometime in the near future.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

Quality Carriers and FLEET Transit Truck Accident, Ridgway Township, **Elk County**. Environmental Alliance, 117 Olde Farm Office Road Suite 135, Duncansville, PA 16635 has submitted a Notice of Intent to Remediate. A vehicle accident occurred on State Route 219 involving two tractor-trailers. Diesel fuel and aluminum sulfate were spilled into a roadside ditch and surface soil. The intended future use of the site is residential with a small farm. The Notice of Intent to Remediate was published in the *The Ridgway Record* on August 26, 2010. The proposed cleanup standard for this site is Statewide Health.

Former McInnes Steel Facility, City of Corry, **Erie County**. Urban Engineers of Erie, Inc., 1319 Sassafras Street, Erie, PA 16501 on behalf of the Redevelopment Authority in the City of Corry, 100 South Center Street, Corry, PA 16407 has submitted a Notice of Intent to Remediate. Fill (foundry slag, cinders, fly ash, and bricks) has been discovered over the majority of the site. Soil sampling and analysis revealed elevated concentrations of heavy metals (specifically arsenic, lead, and iron). The site is to be remediated to meet the Site-Specific Standard. The Redevelopment Authority in the City of Corry intends to develop the site for manufacturing and/or industrial use. The Notice of Intent to Remediate was published in the *Corry Journal* on June 26, 2010.

AIR QUALITY

NOTICE OF PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS NEW SOURCES AND MODIFICATIONS

The Pennsylvania Department of Environmental Protection (DEP) has developed an "integrated" plan approval, State Operating Permit and Title V Operating Permit program. This integrated approach is designed to make the permitting process more efficient for DEP, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

Notice is hereby given that DEP has received applications for plan approvals and/or operating permits from the following facilities.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Office identified in this notice. Persons interested in reviewing the application files should contact the appropriate Regional Office to schedule an appointment.

Persons wishing to receive a copy of the proposed Plan Approval or Operating Permit must indicate their interest to the DEP Regional Office within 30 days of the date of this notice, and must file protests or comments on a Proposed Plan Approval or Operating Permit within 30 days of the DEP providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any comments or protests filed with DEP Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts, which serve as the basis for the objections. If DEP schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

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

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121 through 143, the Federal Clean Air Act and regulations adopted under the Act.

PLAN APPROVALS

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

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

Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940

26-00588: Laurel Mountain Midstream, LLC (1550 Coraopolis Heights Road, Suite 140, Moon Township, PA 15108) for construction of the Shamrock Compressor Station, a natural gas compressor station, in German Township, **Fayette County**.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

66-315-056: The Procter & Gamble Paper Products Co. (P. O. Box 31, Mehoopany, PA 18692) for replacement of a head box and rearrangement of the paper flow path in the press section of the 7M paper machine for their plant in Washington Township, **Wyoming County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b), the Department of Environmental Protection (DEP) intends to issue a Plan Approval No. 66-315-056 to The Procter & Gamble Paper Products Co. P. O. Box 31, Mehoopany, PA 18692, for their plant located in Washington Township, Wyoming County. The facility currently has Title V Permit No. 66-00001. This plan approval will be incorporated into the Title V operating permit through an administrative amendment at a later date, and the action will be published as a notice in the *Pennsylvania Bulletin*.

Plan Approval No. 66-315-056 is for the replacement of head box and rearrangement of the paper flow path in the press section of the 7M paper machine. These changes will de bottleneck the paper machine allowing it to produce approximately 5% of additional paper. The modification will increase 7M paper manufacturing capacity by 11.00 tons/day and 4,015 tons/year. Resulting VOC emissions increases will be 3.5 TPY.

The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711.

Any person(s) wishing to provide DEP with additional information which they believe should be considered prior to the issuance of this permit may submit the information to the address shown in the preceding paragraph. Each written comment must contain the following:

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

Identification of the proposed permit No.: 66-315-056

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

A public hearing may be held, if the Department of Environmental Protection, in its discretion, decides that such a hearing is warranted based on the comments received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or the *Pennsylvania Bulletin* or by telephone, where DEP determines such

notification is sufficient. Written comments or requests for a public hearing should be directed to Raymond Kempa, P.E., Environmental Group Manager, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701, Phone # 570-826-2511 within 30 days after publication date.

48-329-009: PPL Renewable Energy LLC (Two North Ninth Street, Allentown, PA 18101) for installation and operation of two (2) new Caterpillar reciprocating engines/generators as part of a landfill gas-to-energy project at their plant to be in Glendon Borough, **Northampton County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b), the Department of Environmental Protection (DEP) intends to issue a Plan Approval No. 48-329-009 to PPL Renewable Energy LLC (Two North Ninth Street, Allentown, PA 18101), for their plant to be located in Glendon Borough, Northampton County. This plan approval will be incorporated into a Title V Operating Permit through an administrative amendment at a later date, and the action will be published as a notice in the *Pennsylvania Bulletin*.

Plan Approval No. 48-329-009 is for the installation and operation of two new Caterpillar reciprocating engines/generators as part of a landfill gas-to-energy project at the facility. The facility will utilize gas generated by Chrin Landfill. The engines will be subject to 40 CFR Part 60 Subpart JJJJ requirements. The engines are subject to 40 CFR Part 63 Subpart ZZZZ. The VOC emissions from the facility will not equal or exceed 50 TPY, based on a 12-month rolling sum. The NOx emissions from the facility will not equal or exceed 100 TPY, based on a 12-month rolling sum. Total PM and SOx emissions from the facility will not equal or exceed 100 TPY, based on a 12-month rolling sum. The CO emissions from the facility will not equal or exceed 250 TPY, based on a 12-month rolling sum. The combined aggregated HAPs from the facility must never equal or exceed 25 TPY, based on a 12-month rolling sum. The facility will be a major facility since the single HAP emissions (formaldehyde) is greater than 10 TPY based on a 12 month rolling sum. Formaldehyde emissions shall not exceed 1.9 lb/hr per engine. The Plan approval and Operating Permit will include testing, monitoring, record keeping and reporting requirements designed to keep the sources operating within all applicable air quality requirements

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at DEP Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711.

Any person(s) wishing to provide DEP with additional information which they believe should be considered prior to the issuance of this permit may submit the information to the address shown in the preceding paragraph. Each written comment must contain the following:

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

Identification of the proposed permit No. 48-329-009

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

A public hearing may be held, if the DEP, in its discretion, decides that such a hearing is warranted based on the comments received. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspa-

per or the *Pennsylvania Bulletin* or by telephone, where DEP determines such notification is sufficient. Written comments or requests for a public hearing should be directed to Raymond Kempa, P.E., Environmental Group Manager, Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18701-1915, Phone 570-826-2531 within 30 days after publication date.

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

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

36-05154A: Mount Joy Wire Corp. (1000 East Main Street, Mt. Joy, PA 17552) for construction of a natural-gas-fired Spark Ignition Reciprocating Internal Combustion Engine at the Mount Joy plant in Mount Joy Borough, **Lancaster County**.

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

Plan Approval 36-05154A is for the construction and operation of a cogeneration unit for combined heat and power generation at the facility. The unit will be comprised of a non-emergency 10.0 mmBtu/hr spark ignition reciprocating internal combustion engine generating approximately 1.0 megawatt of electric power and a waste heat recovery boiler that will generate 2600 lbs/hr of steam and about 2.3 mmBtu/hr of 180 degree Fahrenheit hot water. The proposed engine will incorporate the use of Best Available Technology (BAT) by incorporating the use of a catalyst to control emissions of Carbon Monoxide (CO) and Volatile Organic Compounds (VOCs), and incorporating the use of fuel-to-air ratio controllers in controlling Nitrogen Oxide (NOx) emissions.

The company will also be subject to and comply with 40 CFR Part 60, Subpart JJJJ - New Source Performance Standards for Stationary Spark Ignition Internal Combustion Engines, and 40 CFR Part 63, Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

The proposed project will increase the facility's annual emissions of Carbon Monoxide (CO) by about 3.0 tons, Nitrogen Oxides (NOx) by around 8.0 tons, and Volatile Organic Compounds (VOCs) by about 5.8 tons. Along with the proposed project the facility has elected to take a Synthetic Minor status by taking Federally Enforceable Operating Limits of less than 50 tons per year for VOCs, less than 25 tons per year for all Hazardous Air Pollutants (HAPs), and less than 10 tons per year for any individual HAP.

The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep and facility operating within all applicable air quality requirements.

Copies of the application, DEP's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110.

A person may oppose the proposed plan approval, or may provide the Department with additional information

to consider in its review, by filing a written protest with the Department at the address listed above. Each written comment must contain the following:

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

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

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

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

Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940

24-169A: Modern Industries, Inc.—US Heat Treaters (PO Box 399, Erie, PA 16512) for five (5) existing tempering furnaces and associated electrostatic precipitators at their facility in Fox Township, **Elk County**.

Pursuant to 25 *Pa. Code* sections 127.44(b) and 127.424(b), the Department of Environmental Protection (DEP) intends to issue Plan Approval 24-169A to Modern Industries, Inc.—US Heat Treaters for five (5) existing tempering furnaces and associated electrostatic precipitators at their facility located at 135 Green Road, Kersey, PA 15846 (Fox Township, Elk County). The Plan Approval will subsequently be incorporated into the facility's Operating Permit through an administrative amendment in accordance with 25 *Pa. Code* Section 127.450.

Plan Approval No. 24-169A is for five (5) existing natural gas fired tempering furnaces. Emissions of particulate matter from these sources will be controlled by four (4) existing electrostatic precipitators. Based on the information provided by the applicant and DEP's own analysis, the subject sources will have the potential to emit approximately 0.07 ton of particulate matter, 0.05 ton of nitrogen oxides (NOx), and 0.01 ton of carbon monoxide per year.

The Plan Approval will contain additional monitoring, recordkeeping and work practice requirements designed to keep the facility operating within all applicable air quality requirements. Copies of the application, DEP's analysis, and other documents used in the evaluation are available for public inspection between the hours of 8 a.m. and 4 p.m. weekdays at the address shown below. To make an appointment, contact Records Management at 814-332-6340.

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

1. Name, address, and telephone number of the person submitting comments.
2. Identification of the proposed Plan Approval; No. 24-169A.

3. Concise statement regarding the relevancy of the information or any objections to issuance of the Plan Approval.

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

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

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

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

05-05005: Bedford Materials Co., Inc. (7676 Allegheny Road, Manns Choice, PA 15550) for their paper coating plant in Napier Township, **Bedford County**. This is a renewal of the Title V Operating Permit issued in 2005. The permit will contain all of the emission limits and work practice standards along with all monitoring, recordkeeping and reporting requirements from the previous permit to ensure the facility complies with the applicable air quality regulations. The facility is subject to 40 CFR Part 63, Subpart JJJJ, National Emissions Standards for Hazardous Air Pollutants—Paper and Other Web Coating.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

48-00092: Essex Northeast Service Center Co. (P. O. Box 1648, Mason City, IA 50401) for a door frame manufacturing / painting plant located in the Forks Township, **Northampton County**. The facility's main source of emissions is a paint spray booth. The facility has applied to the Department as a Synthetic Minor facility. The proposed operating permit contains all applicable requirements including Federal and State regulations. In addition, emission limits, throughput restrictions and monitoring, recordkeeping and reporting conditions regarding compliance with all applicable requirements are also included.

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

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

07-03033: James E. Van Zandt VA Medical Center (2907 Pleasant Valley Boulevard, Altoona PA 16602)

for three boilers, three emergency generators, a parts washer and two ethylene oxide sterilizers at their Medical Center in Logan Township, **Blair County**. The ethylene oxide sterilizers are subject to the National Emission Standards for Hospital Ethylene Oxide Sterilizers—Subpart WWWW. This is a renewal of a State Only Operating Permit issued in 2005.

07-05024: Gulf Oil Ltd Partnership—Altoona Terminal (6033 6th Avenue, Altoona, PA 16602) for bulk petroleum product storage terminal located in Allegheny Township, **Blair County**. This is renewal of a synthetic minor operating permit issued in July 2004.

36-05092: Greiner Industries, Inc. (1650 Steel Way, Mt. Joy, PA 17552) for operation of three paint booths at their steel fabrication facility in Mount Joy Township, **Lancaster County**. This is a renewal of the State-Only Operating Permit issued in 2005.

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

Contact: Matthew Williams, New Source Review Chief—Telephone: 814-332-6940

20-00295: Baillie Lumber Co.,—Titusville Yard (45529 Highway 27, Titusville, PA 16354-5727) to issue a renewal State Only Operating Permit for the sawmill in Oil Creek Township, **Crawford County**. The facility is a Natural Minor. The primary sources at the facility include a 28.1 mmbtu/hr wood fired boiler controlled by two multiclones, natural gas boilers for backup to the wood fired boiler, miscellaneous woodworking operations controlled by a baghouse, a wood waste transferring system controlled with a baghouse, a metal parts washer, a boiler blow down water evaporation pond, a stenciling operation, a dip tank, and eighteen wood drying kilns. The renewal permit contains emission restrictions, recordkeeping, work practice, and additional requirements to ensure compliance with the Clean Air Act and the Air Pollution Control Act.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); the Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Act (52 P. S. §§ 30.51—30.66); the Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to such applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District Mining Office indicated above 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 any person or any officer or head of any federal, state or local government agency or authority to the Department at the address of the District Mining Office indicated above 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—123 and 86.31—34 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences).

Written comments or objections related to a mining permit application should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based.

Requests for an informal conference, or a public hearing, as applicable, on a mining permit application, as provided by 25 Pa. Code § 77.123 (relating to public hearing-informal conferences) or § 86.34 (relating to informal conferences), 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.

Where a National Pollutant Discharge Elimination System (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 found in Table 2 below. Discharges from noncoal mines located in some geologic settings (for example, in the 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 below 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 through 96).

The procedures for determining the final effluent limits, using a mass-balance equation or model, are found in Technical Guidance Document 362-0600-001, NPDES Program Implementation-Memorandum of Understanding (MOU) Concerning Water Quality Management, NPDES Program Implementation, and Related Matters. Other specific factors to be considered include public comments and Total Maximum Daily Load(s) (TMDLs).

Persons wishing to comment on an NPDES permit application should submit a statement to the Department at the address of the District Mining Office indicated above 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. Comments must include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests or petitions for a public hearing on NPDES permit applications, as provided in 25 Pa. Code § 92.61. The request or petition for a public hearing shall be filed within 30 days of this public notice and shall contain the name, address, telephone number and the interest of the party filing the request, and shall state the reasons why a hearing is warranted. A public hearing may be held if the Depart-

ment 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. In the case where 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 Limits—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:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
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			

¹The 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.

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

56050104 and NPDES No. PA0249777. Hoffman Mining, Inc., P. O. Box 130, 118 Runway Road, Friedens, PA 15541, permit renewal for the continued operation and restoration of a bituminous surface and auger mine in Paint Township, **Somerset County**, affecting 161.7 acres. Receiving stream(s): Shade Creek classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 14, 2010.

32980106 and NPDES No. PA0234770. M & S Mining, Inc., Box 343, Punxsutawney, PA 15767, permit renewal for reclamation only of a bituminous surface mine in East Mahoning Township, **Indiana County**, affecting 81.4 acres. Receiving stream(s): unnamed tributaries to Dixon Run classified for the following use(s): high quality cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 17, 2010.

11100104 and NPDES No. PA0263087. RJC Kohl, Inc., 1927 Killen School Road, Nicktown, PA 15762, commencement, operation and restoration of a bituminous surface mine in Susquehanna, Elder and West Carroll Townships, **Cambria County**, affecting 98.5 acres. Receiving stream(s): unnamed tributaries to Fox Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 21, 2010.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500

03080106 and NPDES Permit No. PA0251542. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Application received to revise permit to allow mining of 20.7 acres of Lower Kittanning coal at an existing bituminous surface mining site located in Redbank Township, **Armstrong County**, affecting 261.0 acres. Receiving streams: unnamed tributaries to Mahoning Creek and an unnamed tributary to Pine run, classified for the following use: cold water fishes. There are no potable water supply intakes within ten miles downstream from the point of discharge. Revision application received: September 21, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

12040102 and NPDES No.0256145. Allegheny Enterprises, Inc. (3885 Roller Coaster Road, Corsica, PA 15829). Renewal of an existing bituminous surface mine located in Shippen Township, **Cameron County** affecting 206.0 acres. Receiving streams: unnamed tributaries to Finley Run classified for Cold Water Fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 3, 2010.

17860135 and NPDES No. PA0115622. Strishock, LLC (220 Hillcrest Drive, DuBois, PA 15801). Transfer of an existing bituminous surface mine from Strishock Coal Co. located in Union, Brady and Sandy Townships, **Clearfield County** affecting 367.6 acres. Receiving streams: Laborde Branch; Sugar Camp Run to Luthersburg Branch to Laborde Branch, tributaries to Stony Run to Laborde Branch to Sandy Like Creek to Redbank Creek to Allegheny River classified for the following uses: cold water fishery - warm water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 10, 2010.

17030114 and NPDES No. PA 0243604. Strishock, LLC (220 Hillcrest Drive, DuBois, PA 15801). Transfer of an existing bituminous surface mine from Strishock Coal Co. located in Knox Township, **Clearfield County** affecting 71.0 acres. Receiving stream: unnamed tributary to Potts Run classified for cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 10, 2010.

17060102 and NPDES No. PA0256331. Strishock, LLC (220 Hillcrest Drive, DuBois, PA 15801). Transfer of an existing bituminous surface mine from Strishock Coal Co. located in Brady Township, **Clearfield County** affecting 140.0 acres. Receiving streams: one unnamed tributary to Beech Run & East Branch Mahonning Creek (high quality cold water fishery) to East Branch Mahonning Creek (cold water fishery) to Mahonning Creek (warm water fishery) to Allegheny River (warm water fishery) to Ohio River (warm water fishery). There are no potable water supply intakes within 10 miles downstream. Application received: September 10, 2010.

17070117 and NPDES No. PA0256676. Strishock, LLC (220 Hillcrest Drive, DuBois, PA 15801). Transfer of an existing bituminous surface mine from Strishock Coal Co. located in Knox Township, **Clearfield County** affecting 171.8 acres. Receiving stream: Potts Run classified for cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: September 10, 2010.

17793123 and NPDES No. PA0089603. Strishock, LLC (220 Hillcrest Drive, DuBois, PA 15801). Transfer

from an existing bituminous surface mine from Strichock Coal Co. located in Union and Brady Townships, **Clearfield County** affecting 102.8 acres. Receiving streams: Sugar Camp Run to Luthersburg Branch classified for cold water fisheries. There are no potable water supply intakes within 10 miles downstream. Application received: September 10, 2010.

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

54851315R5 and NPDES Permit No. PA0224464. Summit Anthracite, Inc., (196 Vista Road, Klingerstown, PA 17941), renewal for reclamation activities only of an existing anthracite underground mine operation in Schuylkill Township, **Schuylkill County** affecting 9.5 acres, receiving stream: Big Creek. Application received: September 17, 2010.

54850103R5 and PA0614491. Michael Coal Company, (PO Box 8, Williamstown, PA 17098), renewal of an existing anthracite surface mine operation in Tremont and Frailey Townships, **Schuylkill County** affecting 217.6 acres, receiving streams: Lower Rausch Creek and Good Spring Creek. Application received: September 20, 2010.

Noncoal Applications Received

Effluent Limits—The following effluent limits will apply to NPDES permits issued in conjunction with a noncoal mining permit:

Parameter	Table 2		
	30-Day Average	Daily Maximum	Instantaneous Maximum
Suspended solids	10 to 35 mg/l	20 to 70 mg/l	25 to 90 mg/l
Alkalinity exceeding acidity* pH*		greater than 6.0; less than 9.0	

* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

08100306 and NPDES No. PA0257451. Marcus Cole DBA Cole's Construction, (P. O. Box 158, Nichols, NY 18312). Commencement, operation and restoration of a large non-coal (overburden, shale/bluestone) surface mine located in Windham Township, **Bradford County** affecting 20.0 acres. Receiving streams: unnamed tributary to Wysox Creek (cold water fishery) to Wysox Creek (cold water fishery) to Susquehanna River (warm water fishery); unnamed tributary to Trout Brook (cold water fishery) to Trout Brook (cold water fishery) to Wysox Creek (cold water fishery) to Susquehanna River (warm water fishery). There are no potable water supply intakes within 10 miles downstream. Application received: September 21, 2010.

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

58100301. Meshoppen Stone, Inc., (P. O. Box 27, Meshoppen, PA 18630), commencement, operation and restoration of a quarry operation in Auburn Township, **Susquehanna County** affecting 61.7 acres, receiving stream: unnamed tributary to Little Meshoppen Creek, classified for the following use: cold water fishery. Application received: September 14, 2010.

52080802. Andrew Polowy, (11390 N. Delaware Drive, Bangor, PA 18013), Stage I & II bond release of a quarry operation in Shohola Township, **Susquehanna County** affecting 2.0 acres on property owned by White Game Club, Inc. Application received: September 17, 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 of Environmental Protection. Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1341), requires the state to certify that the involved projects will not violate the applicable provisions of Sections 301—303, 306 and 307 of the FWPCA 33 U.S.C. §§ 1311—1313, 1316 and 1317 as well as relevant state requirements. Persons objecting to approval of a request

for certification under Section 401 or to the issuance of a Dam Permit or Water Obstruction and Encroachment Permit, or the approval of an Environmental Assessment must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted above the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed, and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. 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 the hours of 8:00 AM and 4:00 PM on each working day at the office noted above the application.

If you are a person with a disability and wish to attend the hearing and you require an auxiliary aid, service or other accommodation to participate in the proceedings, please contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at 1-800-654-5984.

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Floodplain Management Act (32 P. S. § 679.302) and Requests for Certification under Section 401 of the Federal Water Pollution Control Act (33 U.S.C. §§ 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southcentral Region: Watershed Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110. Telephone: 717-705-4707.

E06-661: Hamburg Municipal Authority, 61 N. 3rd Street, Hamburg, PA, 19526, Windsor Township, **Berks County**, ACOE Philadelphia District

To construct and maintain a 1.0-foot depressed 5.0-foot high by 16.0-foot wide pre-cast concrete box culvert in Furnace Creek (CWF) for the purpose of creating an access road to a proposed municipal well. The project is located approximately 1/3 mile past the existing water filtration plant located on Reservoir Road (Hamburg PA quadrangle, N: 16 inches, W: 9.5 inches, Latitude: 40° 35' 14", Longitude: 76° 56' 30") in Windsor Township, Berks County. No wetland impacts will occur as a result of this project.

Northcentral Region: Watershed Management Program Manager, 208 West Third Street, Williamsport, PA 17701, 570-327-3636

E49-312. Delaware Township Municipal Authority, PO Box 80, Dewart, PA 17730. Northern Neighbors Sewer Improvements Project, in Delaware Township, Watsonstown 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 5 Stream Crossings. All crossings are intended to be directional drilling or aerial crossings. The five 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: Warrior Run, Warm Water Fishery, South end of Watsonstown; Crossing 4: Muddy Run, Warm Water Fishery, Just east of SR 0080 and North of SR 0405; Crossing 5: 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.

E60-208. Pennsylvania Department of Transportation, Engineering District 3-0, PO Box 218 Montoursville, PA 17754-0218. SR 1004, Section 021 Roadway Safety Improvements, Kelly Township, **Union County**, ACOE Baltimore District (Allenwood, PA Quadrangle N: 41° 00' 59"; W: 76° 55' 55").

PA DOT Engineering District 3-0 proposes to perform safety improvements on SR 1004 to include roadway widening and realignment of existing horizontal and vertical curves. The safety improvements will result in a total of 478 ft. of stream relocations to three different Un-named Tributaries to Little Buffalo Creek, 0.014 Acres of Temporary Wetland Impact, and 0.04 Acres of Permanent Wetland Impact. The Un-named Tributaries to Little Buffalo Creek are classified as a Cold Water Fishery by Title 25, Chapter 93 Water Quality Standards. The proposed project will require Stream and Wetland Mitigation.

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

E37-184, PA DOT, District 11-0, Bridgeville, PA SR 0018-L11 Jefferson Street Bridge Across Neshannock Creek, in City of New Castle, **Lawrence County**, ACOE Pittsburgh District (New Castle North, PA Quadrangle N: 40°, 59', 45.7"; W: 80°, 20', 49.4").

To remove the 59-foot long existing single span through girder bridge and to construct and maintain 53.3-foot long prestressed concrete spread box beam bridge having two clear spans of 78.25 feet and an underclearance of 12 feet on a 70 degree skew across Neshannock Creek on S.R. 0018, Segment 0310, Offset 0520 (Jefferson Street) and to regrade and stabilize approximately 320 feet of the right (north) bank of Neshannock Creek extending downstream from the bridge necessary to offset impacts to the 100-year flood elevations resulting from the introduction of a pier within the channel.

Northwest Region: Oil and Gas Program Manager, 230 Chestnut Street, Meadville, PA 16335 814-332-6860

E2408-001, ARG Resources, Inc., 1562 Rte. 66/948 Box 2016, Kane, PA 16735. East Br. Spring Creek Crossing, in Highland Township, **Elk County**, ACOE Pittsburgh District (Russell City, PA Quadrangle N: 41°, 33', 8.5"; W: 78°, 55', 22.7";).

The applicant proposes to construct and maintain five 6-inch plastic casings under East Branch of Spring Creek and two associated wetlands (a PEM and a PFO) in Highland Township, Elk County on land owned and managed by the United States Forest Service at a point approximately 2800 feet ENE of the intersection of T-322 and FSR 335.1. The proposed casings, which will contain 1.5 to 2 inch plastic produced fluid and injection fluid transport lines, are approximately 310 feet in length and will be bored a minimum of 3 feet below the bottom of East Branch of Spring Creek and the two associated

Exceptional Value Wetlands. The total disturbed area for the proposed project is 0.3 acres and includes approximately 1680 total feet of new pipeline. East Branch Spring Creek is a perennial body of water classified as a High Quality - Cold Water Fishery. East Branch Spring Creek is approximately 30 feet wide and the wetlands are approximately 60 and 25 feet wide each.

ENVIRONMENTAL ASSESSMENTS

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

EA36-026: Gideon F. Stoltzfus, 461 White Horse Road, Gap, PA, 17527 Salisbury Township, **Lancaster County**, ACOE Baltimore District

To install a 6.0-inch diameter by 50.0-foot long schedule 40 PVC pipe footer drain outlet in the floodway of an unnamed tributary to Pequea Creek (HQ-CWF) for the purpose of improving water quality through the installation of agricultural best management practices on a farm. The project is located approximately 1,000 feet south of the intersection of Cains Road and Route 897 (Honey Brook, PA Quadrangle; Latitude: 40° 00' 48"N, Longitude: 75° 59' 27"W) in Salisbury Township, Lancaster County.

ACTIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOIs) for coverage under General Permits. This Notice of Final Action is provided in accordance with regulations at 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of the Pennsylvania Clean Streams Law, 35 P. S. §§ 691.1 et seq., and the Federal Clean Water Act, 33 USCA §§ 1251 et seq.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New, 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 through VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater, and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for Coverage under General NPDES Permit(s). The approval for coverage under these general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. 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 above the action.

ANY PERSON AGGRIEVED BY ANY OF THESE ACTIONS MAY APPEAL THAT ACTION TO THE ENVIRONMENTAL HEARING BOARD, PURSUANT TO SECTION 4 OF THE ENVIRONMENTAL HEARING BOARD ACT, 35 P. S. § 7514, AND THE ADMINISTRATIVE AGENCY LAW, 2 PA. C.S. CHAPTER 5A. 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 ENVIRONMENTAL HEARING 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 ANY RIGHT OF APPEAL BEYOND THAT PERMITTED BY APPLICABLE STATUTES AND DECISIONAL LAW.

IF YOU WANT TO CHALLENGE AN ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD CONTACT A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

I. NPDES Renewal Permit Actions

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N?</i>
PAS142202 (Storm Water)	Packaging Corp Of America 7451 Centronia Road Allentown, PA 18106	Lehigh County Upper Macungie Township	Iron Run (2-C)	Y
PA0029653 (Sewage)	Jewish Community Center Day Camp Route 502 Daleville, PA 18444	Lackawanna County Covington Township	Spring Brook (5-A)	Y
PA0014681 (Industrial Waste)	Nestle Purina PetCare Company 2050 Pope Road Allentown, PA 18104-9308	Lehigh County South Whitehall Township	Unnamed Tributary to Jordan Creek (2-C)	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>
PA0080918 (Sew)	Rick Long 101 Speedwell Forge Road Lititz, PA 17543	Lancaster County / Elizabeth Township	Kettle Run / 7-J	Y
PA0247782 (IW)	Value Auto Salvage 13058 Greenwood Road Huntingdon, PA 16652	Huntingdon County / Jackson Township	Standing Stone Creek / 11-B	Y
PA0083909 (Sew)	Conestoga Wood Specialities Corporation 245 Reading Road East Earl, PA 17519	Lancaster County/	Conestoga River / 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>
PA0090182	Concordia Lutheran Ministries 134 Marwood Road Cabot, PA 16023-2206	Butler County Jefferson Township	Unnamed Tributary to Little Buffalo Creek 18-F	Y
PA0209929	Dennis Stefanak 69 Romain Road Pulaski, PA 16143-1215	Mercer County Shenango Township	Unnamed Tributary to the Shenango River 20-A	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. PA0057690 Amendment No. 1, Industrial Waste, **Aker Philadelphia Shipyard**, 2100 Kitty Hawk Avenue, Philadelphia, PA 19112-1808.

This proposed facility is located in Philadelphia City, **Philadelphia County**.

Description of Proposed Action/Activity: Approval for the amendment to discharge from a facility known as Aker Philadelphia Shipyard to Delaware River and Schuylkill River—Estuary Zone 4, in Watershed(s) 3-F and 3-J.

NPDES Permit No. PA0011088, Industrial Waste, **Plains Products Terminals, LLC**, 6850 Essington Avenue, Philadelphia, PA 19153.

This proposed facility is located in City of Philadelphia, **Philadelphia County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge stormwater runoffs from a facility known as Plains Product Terminals to an Unnamed Tributary to Schuylkill River in Watershed 3-F.

NPDES Permit No. PA0243965, Industrial Waste, **Silvi Concrete of Chester County, LLC**, 355 Newbold Road, Fairless Hills, PA 19030-4313.

This proposed facility is located in Lower Oxford Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge stormwater runoffs from a site of a ready mix concrete batch plant located at 1824 Baltimore Pike, Oxford PA to an Unnamed Tributary to West Branch Big Elk Creek in Watershed 7-K.

NPDES Permit No. PA0026867, Sewage, **Abington Township**, 1176 Old York Road, Abington, PA 19001-3713.

This proposed facility is located in Abington Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge an average flow of 3.91 MGD of treated sewage to Sandy Run in Watershed 3F-Lower Schuylkill.

NPDES Permit No. PA0026166, Sewage, **Warminster Municipal Authority**, 415 Gibson Avenue, P. O. Box 2279, Warminster, PA 18974.

This proposed facility is located in Warminster Township, **Bucks County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge an annual flow of 8.18 MGD and a maximum monthly flow of 13.5 MGD of treated sewage to the Little Neshaminy Creek in Watershed 2F-Neshaminy.

NPDES Permit No. PA0050521, Sewage, **Green Lane - Marlborough Joint Authority**, 106 Gravel Pike at Perkiomen Trail, PO Box 45, Green Lane, PA 18054.

This proposed facility is located in Green Lane Borough, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge 0.200 MGD of treated sewage to Perkiomen Creek in Watershed 3-E.

NPDES Permit No. PA0020532, Sewage, **Upper Montgomery Joint Authority**, P. O. Box 6, Pennsburg, PA 18073-0006.

This proposed facility is located in Upper Hanover Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge 2.0 MGD of treated sewage to Green Lane Reservoir (Perkiomen Creek) in Watershed 3-E.

NPDES Permit No. PA0026794, Sewage, **Borough of Conshohocken Authority**, 601 East Elm Street, Conshohocken, PA 19428-1914.

This proposed facility is located in Conshohocken Borough, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge an average annual design flow of 2.3 MGD of treated effluent to the Schuylkill River in Watershed 3F.

NPDES Permit No. PA0244040, Sewage, **Shelly Square, LP**, 528 Main Street, Harleysville, PA 19610.

This proposed facility is located in Upper Salford Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge 12,446 gpd of treated sewage to East Branch Perkiomen Creek in Watershed 3-E.

NPDES Permit No. PA0038903, Sewage, **Sunoco Partners Marketing & Terminals, LP**, 1818 Market Street, Suite 1500, Philadelphia, PA 19103.

This proposed facility is located in East Whiteland Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge stormwater to Little Valley Creek via Outfall 001 in Watershed 3F-Lower Schuylkill River.

NPDES Permit No. PAG040149, Sewage, **Mr. & Mrs. Keith Novak**, 902 General Howe Drive, West Chester, PA 19382-7106.

This proposed facility is located in Westtown Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge to an Unnamed Tributary to Plum Run in Watershed 3-H.

NPDES Permit No. PA0052230, Sewage, **Spring Hill Farm WWTF Association**, PO Box 756, Chadds Ford, PA 19317.

This proposed facility is located in Chadds Ford Township, **Delaware County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge 100,000 gpd of treated sewage to an Unnamed Tributary to Webb Creek in Watershed 3G.

NPDES Permit No. PA0053244, Sewage, **Charles Adcock d.b.a. The Valley Queen**, 13 Bennington Place, Newtown, PA 18940.

This proposed facility is located in Upper Makefield Township, **Bucks County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge 1,400 gpd of treated sewage to Houghs Creek in Watershed 2E.

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

NPDES Permit No. PA0261556, Sewage, **Whispering Hope East**, 23A South New Holland Road, Gordenville, PA 17529.

This proposed facility is located in West Earl Township, **Lancaster County**.

Description of Proposed Action/Activity: Authorization to discharge to the Conestoga River in Watershed 7-J.

NPDES Permit No. PA0261530, Sewage, **David W. Ketner**, 159 Garland Drive, Carlisle, PA 17013. This proposed facility is located in North Middleton Township, **Cumberland County**.

Description of Proposed Action/Activity: Authorization to discharge to Conodoguinet Creek in Watershed 7-B.

NPDES Permit No. PA0080586 Amendment No. 1, Sewage, **Morton Building, Inc.**, 3370 York Road, Gettysburg, PA 17325-8258.

This proposed facility is located in Straban Township, **Adams County**.

Description of Proposed Action/Activity: Authorization to discharge to an unnamed tributary to Swift Run in Watershed 7-F.

NPDES Permit No. PA0026875 Amendment No. 2, Sewage, **Borough of Hanover**, 44 Frederick Street, Hanover, PA 17331-3501.

This proposed facility is located in Conewago Township, **Adams County**.

Description of Proposed Action/Activity: Authorization to discharge to Plum Creek and South Branch Conewago Creek in Watershed 7-F.

NPDES Permit No. PA0043273, Sewage, **Hollidaysburg Borough Sewer Authority**, 401 Blair Street, Hollidaysburg, PA 16648-1805.

This proposed facility is located in Frankstown Township, **Blair County**.

Description of Proposed Action/Activity: Authorization to discharge to Frankstown Branch Juniata River in Watershed 11-A.

Northcentral Regional Office: Regional Water Management Program Manager, 208 W Third Street Suite 101, Williamsport, PA 17701-6448, Telephone: 570-327-0532.

PA0233901, Industrial Waste, SIC Code 4953, 562200, **Somerset Region Water Resources LLC**, 4 SR 1006, Tunkhannock, PA 18657-0002. Facility Name: Tuscarora Township Facility. This proposed facility is located in Tuscarora Township, **Bradford County**.

Description of Proposed Activity: Issuance of a new NPDES permit for a new discharge of treated industrial waste and storm waters.

The receiving stream(s), Susquehanna River, is located in State Water Plan watershed 4-D and is classified for Warm Water Fishes, aquatic life, water supply and recreation. The discharge is not expected to affect public water supplies.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.5 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>Instantaneous Maximum</i>
Flow (MGD)	Report	Report	XXX	XXX	XXX	XXX
pH (S.U.)	XXX	XXX	6.0	XXX	XXX	9.0
Specific Conductance (umhos/cm)	XXX	XXX	XXX	Report	Report	XXX
BOD5	221	680	XXX	53	163	204
Chemical Oxygen Demand	Report	Report	XXX	Report	Report	XXX
Total Suspended Solids	42	83	XXX	10	20	25
Total Dissolved Solids	2085	4170	XXX	500	1000	1250
Osmotic Pressure (mOs/kg)	XXX	XXX	XXX	Report	Report	XXX
Oil and Grease	63	XXX	XXX	15	XXX	30
Ammonia-Nitrogen	104	209	XXX	25	50	63
Acidity, Total (as CaCO3)	Report	Report	XXX	Report	Report	XXX
Alkalinity, Total (as CaCO3)	Report	Report	>Acidity	Report	Report	XXX
Total Aluminum	8.3	17	XXX	2.0	4.0	5.0
Total Arsenic	Report	Report	XXX	Report	Report	XXX
Total Barium	42	83	XXX	10	20	25
Total Beryllium	Report	Report	XXX	Report	Report	XXX
Total Boron	Report	Report	XXX	Report	Report	XXX
Total Cadmium	0.15	0.24	XXX	0.037	0.058	0.093
Total Chromium	Report	Report	XXX	Report	Report	XXX
Total Cobalt	Report	Report	XXX	Report	Report	XXX
Total Copper	1.0	1.6	XXX	0.24	0.38	0.60
Dissolved Iron	Report	Report	XXX	Report	Report	7.0
Total Iron	13	25	XXX	3.0	6.0	7.5
Total Lead	2.4	3.7	XXX	0.57	0.89	1.4
Total Lithium	Report	Report	XXX	Report	Report	XXX
Total Manganese	8.3	17	XXX	2.0	4.0	5.0
Total Magnesium	Report	Report	XXX	Report	Report	XXX
Total Calcium	Report	Report	XXX	Report	Report	XXX
Total Mercury	Report	Report	XXX	Report	Report	XXX
Total Molybdenum	Report	Report	XXX	Report	Report	XXX
Total Nickel	Report	Report	XXX	Report	Report	XXX
Total Selenium	Report	Report	XXX	Report	Report	XXX
Total Silver	0.27	0.42	XXX	0.065	0.10	0.16
Total Sodium	Report	Report	XXX	Report	Report	XXX

<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>Instantaneous Maximum</i>
Total Strontium Sulfate	42	83	XXX	10	20	25
Total Zinc	1043	2085	XXX	250	500	625
o-Cresol	1.8	2.1	XXX	0.420	0.497	1.05
2,4,6-Trichlorophenol	2.3	8.0	XXX	0.561	1.92	2.4
Phenol	0.44	0.65	XXX	0.106	0.155	0.265
Acetone	4.5	15	XXX	1.08	3.65	4.6
Acetophenone	33	126	XXX	7.97	30.2	37.8
Ethylbenzene	0.23	0.48	XXX	0.056	0.114	0.14
Benzene	Report	Report	XXX	Report	Report	XXX
Chloride	4.2	6.7	XXX	1.0	1.6	2.5
Bromide	1043	2085	XXX	250	500	625
2-Butanone	Report	Report	XXX	Report	Report	XXX
Ethylene Glycol	7.7	20	XXX	1.85	4.81	6.0
MBAS	Report	Report	XXX	Report	Report	XXX
p-Cresol	0.85	2.9	XXX	0.205	0.698	0.87
Pyridine	0.76	1.5	XXX	0.182	0.370	0.46
Toluene	Report	Report	XXX	Report	Report	XXX
Total Xylenes	Report	Report	XXX	Report	Report	XXX
Hardness, Total (as CaCO ₃)	Report	Report	XXX	Report	Report	XXX
Gross Alpha (pCi/L)	XXX	XXX	XXX	Report	Report	XXX
Radium 226/228, Total (pCi/L)	XXX	XXX	XXX	Report	Report	XXX

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 (lb/day)</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	
Total Nitrogen	Report	Report		Report	
Total Phosphorus	Report	Report		Report	
Net Total Nitrogen*	Report	0			
Net Total Phosphorus*	Report	0			

* 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 the first full water year (November 1 through October 31).

** The reporting requirements for annual loads will be required to be reported on the Supplemental DMR—Annual Nutrient Summary for each water year.

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

I. CHESAPEAKE BAY NUTRIENT REQUIREMENTS

II. OTHER REQUIREMENTS

A. The right to require operation and/or construction changes, when necessary, to produce an acceptable discharge

B. Requires proper disposal of sludge

III. RECEIPT OF RESIDUAL WASTE

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

The EPA Waiver is not in effect.

III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

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

WQM Permit No. 1310401, Sewerage, **Borough of Palmerton**, 443 Delaware Avenue, Palmerton, PA 18071-1908.

This proposed facility is located in Palmerton Borough, **Carbon County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit for construction of an upgrade to the existing 0.75 MGD wastewater treatment plant, including: influent flow monitoring, raw sewage pumps and controls, sequencing batch reactors, equalization tanks, ultraviolet disinfection, cascade aeration and a Cannibal solids reduction system.

WQM Permit No. 6410401, Sewerage, **Big Bear Property Owners Association, Inc.**, 202 Henderson Court, Matawan, NJ 07747.

This proposed facility is located in Paupack Township, **Wayne County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit for the construction of a new sewage treatment system which will include pretreatment tanks, effluent filters, aerobic secondary treatment by means of a recirculating sand filter, flow equalization, and final disposal to a drip irrigation system.

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

WQM Permit No. 2209401, Amendment #2, Sewage, **Gratz Borough Municipal Authority**, 125 North Center Street, Gratz, PA 17030.

This proposed facility is located in Gratz Borough, **Dauphin County**.

Description of Proposed Action/Activity: Permit approval for the modifications and operation of sewerage facilities consisting of: Eliminate proposed new aerobic digesters and associated blowers; upgrade sludge transfer pumps from 93 GPM@36 TDH to 100 GPM@36 TDH; and retain existing two digesters for sludge processing.

WQM Permit No. 0610201, Industrial Waste, **Reading Area Water Authority**, 815 Washington Street, Reading, PA 19601-3658.

This proposed facility is located in Ontelaunee Township, **Berks County**.

Description of Proposed Action/Activity: Permit approval for the construction/modification of industrial waste facilities consisting of: enlarged decant wet well with submersible pumps, mix tank, clarifier thickener, effluent meter pit with effluent meter, and chemical feed building along with piping and other appurtenances.

WQM Permit No. 5010401, Sewage, **Millerstown Borough Council, c/o Borough Manager**, 44 North High Street, Millerstown, PA 17062.

This proposed facility is located in Millerstown Borough, **Perry County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of sewerage facilities consisting of: upgrade of the Millerstown Pump Station (Spring Street and Locust Alley) and construction of two Continuous Sequencing Batch Reactors (CSBR), UV disinfection, and conversion of existing extended aeration tank to aerobic digester.

WQM Permit No. 3610403, Sewage, **Whispering Hope East**, 23A South New Holland Road, Gordenville, PA 17529.

This proposed facility is located in West Earl Township, **Lancaster County**.

Description of Proposed Action/Activity: Permit approval for the construction / operation of sewage facilities consisting of septic tank and aerobic treatment plant with tablet chlorination, chlorine contact tank, and tablet dechlorination, and outfall to Conestoga Creek.

WQM Permit No. 2110404, Sewage, **David W. Ketner**, 159 Garland Drive, Carlisle, PA 17013.

This proposed facility is located in North Middleton Township, **Cumberland County**.

Description of Proposed Action/Activity: Permit approval for the construction / operation of sewage facilities consisting of a SFTF with septic tank, peat filter, tablet chlorinator, chlorine contact tank and outfall.

WQM Permit No. 6710404, Sewage, **Morton Building, Inc.**, 3370 York Road, Gettysburg, PA 17325-8258.

This proposed facility is located in Straban Township, **Adams County**.

Description of Proposed Action/Activity: Permit approval for the construction of sewage facilities consisting of a prepackaged Dutchland aeration system with an equalization tank, aeration tank, clarifier, sludge holding tank, chlorine contact tank and an effluent pump station.

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

WQM Permit No. 5510401, Sewerage 4952, **Penns Creek Municipal Authority**, PO Box 148, Penns Creek, PA 0148.

This facility is located in Center Township, **Snyder County**.

Description of Proposed Action/Activity: The applicant is approved for improvements to the existing Wastewater Treatment Plant to increase the performance of the facility. The upgrades will convert the WWTP from a lagoon system to an activated sludge process. No increases will be made to the capacity of the plant.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745

WQM Permit No. 5609002, CAFO, **Hillcrest Saylor Dairy Farms, LLC**, 3684 Kingwood Road, Rockwood, PA 15557

This proposed facility is located in Middle Creek Township, **Somerset County**

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a manure storage facility.

WQM Permit No. 467S021-A5, Sewerage, **Masontown Municipal Authority**, 2 Court Avenue, Masontown, PA 15461-1841

This existing facility is located in Masontown Borough, **Fayette County**

Description of Proposed Action/Activity: Permit amendment issuance.

WQM Permit No. 0210404, Sewerage, **Municipality of Penn Hills**, 12245 Frankstown Road, Penn Hills, PA 15235-3494

This proposed facility is located in Penn Hills Township, **Allegheny County**

Description of Proposed Action/Activity: Permit issuance for the construction and operation of sanitary sewers.

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

WQM Permit No. WQG018771, Sewerage, **Tomilyn Miller**, P. O. Box 834, Greenville, PA 16125

This proposed/existing facility is located in West Salem Township, **Mercer County**.

Description of Proposed Action/Activity: A Single Residence Small Flow Treatment Facility.

IV. NPDES Stormwater Discharges from Municipal Separate Storm Sewer Ssystems (MS4) Permit Actions

V. NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4) Actions

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024809009	UGI Development Co. 1 Meridian Blvd Suite 2C01 Wyomissing, PA 19610	Northampton Co.	Forks Twp.	Unnamed Tributary to Bushkill Creek (HQ-CWF, MF)
PAI023910007	Air Products Chemicals, Inc. 7201 Hamilton Blvd. Allentown, PA 18195-1501	Lehigh Co.	Upper Macungie Twp	Iron Run (HQ-CWF, MF) Little Lehigh Creek (HQ-CWF, MF)

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>
PAI033609002	Paul Lantz Builders 140 Stubel Road Strasburg, PA 17579	Lancaster	Bart Township	West Branch Octoraro Creek/HQ-CWF-MF

Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Fayette County Conservation District, 10 Nickman Plaza, Lemont Furnace, PA 15465 (724-438-4497).

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI052607002-1	Atlantic Wind, LLC (Subsidiary of Iberdrola Renewables, Inc.) Suite 500 201 King of Prussia Road Radnor, PA 19087	Fayette	Georges, Wharton and Springhill Townships	Big Sandy Creek (HQ-CWF) Laurel Run (HQ-CWF) Mountain Creek (CWF) Quebec Run (EV) Rubles Run (CWF)

Greene County Conservation District, 93 East High Street, Room 215, Waynesburg, PA 15370 (724-852-5278).

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI053009001	West Penn Power Company d/b/a Allegheny Power 800 Cabin Hill Drive Greensburg, PA 15301	Greene	Center and Franklin Townships	Stewart Run and Pursley Creek (HQ-WWF) and Smith Creek (WWF)

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From 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 (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Non-Exceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

General Permit Type—PAG-02

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Buckingham Township Bucks County	PAG0200 091054	JC McGinn Construction Co 5775 York Road Lahaska, PA 18931	Tributary Pidcock Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Upper Southampton Township Bucks County	PAG0200 0909068	Upper Southampton Township 939 Street Road Southampton, PA 18966	South Creek/Pennypack Creek Watershed (TSF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Hilltown Township Bucks County	PAG0200 0909108	DeLuca Homes 107 Floral Vale Boulevard Yardley, PA 19067	East Branch Perkiomen Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Middletown Township Bucks County	PAG0200 091030	Middletown Township 3 Municipal Way Langhorne, PA 19047	Neshaminy Creek (WWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Newtown Township Delaware County	PAG0200 2309026	3810 West Chester Pike, Inc. 2405 West Chester Pike Newtown Square, PA 19073	Crum Creek (CWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Haverford Township Delaware County	PAG0200 2308053	Rugby Partners, LP Po Box 450 Bryn Mawr, PA 19010	Cobbs Creek (WWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Pottstown Borough Montgomery County	PAG0200 461052	Norfolk Southern Railway Co. 1200 Peachtree St— NE 7-142 Atlanta, GA 30309	Unnamed Tributary West Branch Schuylkill River (WWF-MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Upper Merion Township Montgomery County	PAG0200 461041	Upper Merion Township 175 W Valley Forge Road King of Prussia, PA 19406	Unnamed Tributary Schuylkill River (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Upper Dublin Township Montgomery County	PAG0200 461046	Upper Dublin Township 801 Loch Alsh Avenue Fort Washington, PA 19034	Sandy Run (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
City of Philadelphia Philadelphia County	PAG0201 511017	Philadelphia Regional Port Authority 3460 North Delaware Avenue Philadelphia, PA 19134	Delaware River (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 484-250-5900
Saint Clair Boro Schuylkill Co.	PAG2005404024R	Hunter Ridge Development Co. 3900 Skippack Pike, Su A8 PO Box 135 Skippack, PA 19474	Mill Creek CWF, MF	Schuylkill Co. Conservation District 570-622-3742
Williams Twp, Glendon Boro, Northampton County	PAG02004810004	Gregory Chrin Chrin Brothers, Inc. 635 Industrial Drive Easton, PA 18042	Unnamed Tributary to Lehigh River CWF, MF	Northampton Co. Conservation District 610-746-1971
Ruscombmanor Township Berks County	PAG2000605078-R	Spiro Phyrillas European Builders 2718 Bernville Road Reading, PA 19605	Willow Creek/ CWF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533 610-372-4657
Reading City Muhlenberg Township Berks County	PAG2000610041	William Wood Albright College 13th & Bern Streets P. O. Box 15234 Reading, PA 19612-5234	UNT to Schuylkill River/ WWF-MF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533 610-372-4657
Penn Township Berks County	PAG2000610042	Richard Hoffman 72 Scull Hill Loop Road Bernville, PA 19506	Irish Creek-UNT to Blue Marsh/WWF-TSF	Berks County Conservation District 1238 County Welfare Road, Suite 200 Leesport, PA 19533 610-372-4657
College Township Harris Township Centre County	PAG2001405012R	Stephen Benson Philipsburg-Osceola Area School District 200 Short Street Philipsburg, PA 16866	Spring Creek HQ-CWF	Centre County Conservation District 414 Holmes Avenue, Suite 4 Bellefonte, PA 16823 (814) 355-6817
Potter Township Centre County	PAG2001410017	Robert Poole Old Fort LP- Old Fort Road Mgmt LLC 2121 Old Gatesburg Road, Suite 200 State College, PA 16801	UNT to Penns Creek CWF	Centre County Conservation District 414 Holmes Avenue, Suite 4 Bellefonte, PA 16823 (814) 355-6817
Beaver Township Black Creek Township Hazle Township Sugarloaf Township North Union Township Columbia County Luzerne County Schuylkill County	PAG2001909007	Penn Wind, LLC 353 Market Street, Rear #2 Sunbury, PA 17801	UNT to Black Creek CWF UNT to Tomhicken Creek CWF UNT to Beaver Run CWF UNT to Catawissa Creek TSF	Columbia County Conservation District 702 Sawmill Road Suite 204 Bloomsburg, PA 17815 (570) 784-1310, X 102

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Clinton Township Lycoming County	PAG2004110013	Halliburton Energy Services, Inc. 10200 Bellaire Blvd Houston, TX 77072	Turkey Run WWF, MF West Branch of Susquehanna River WWF, MF	Lycoming County Conservation District 542 County Farm Rd Suite 202, Montoursville, PA 17754, (570) 433-3003
Beaver Township Snyder County	PAG2005510004	Jeff Stratton Trustees of God's Missionary Church 195 Creek Rd Beavertown, PA 17813	UNT to Middlecreek CWF	Snyder County Conservation District 403 West Market Street Middleburg, PA 17842 (570) 837-0007, X 5
Fayette County Redstone Township	PAG2002605023 R	Pennsylvania Turnpike Commission Frank Kempf P. O. Box 67676 Harrisburg, PA 17106	UNT to Colin Run (WWF) UNT to Dunlap Creek (TSF) UNT to Redstone Creek (WWF)	Fayette County CD 10 Nickman Plaza Lemont Furnace, PA 15456
Fayette County Georges Township	PAG02002610012	Robert G. Hirtz Atlas America, LLC 311 Rouser Road Moon Township, PA 15108	Georges Creek (WWF)	Fayette County CD 10 Nickman Plaza Lemont Furnace, PA 15456
Washington County California Borough	PAG02006310015	California University of PA 250 University Avenue California, PA 15419	UNT to Monongahela River (WWF)	Washington County CD 602 Courthouse Square Washington, PA 15301 724-228-6774
Washington County Nottingham Twp.	PAG02006310017	Albico, Inc. Ronald Sopko PO Box 179 Venetia, PA 15367	Peters Creek (WWF)	Washington County CD 602 Courthouse Square Washington, PA 15301 724-228-6774
Washington County California Borough	PAG02006310019	Crossgates, Inc. 3555 Washington Road McMurray, PA 15317	Pike Run (TSF)	Washington County CD 602 Courthouse Square Washington, PA 15301 724-228-6774
Borough of Venango & Cambridge Township Crawford County	PAG02 0020 10 001	PennDOT Eng District 1-0 Donald Hall 255 Elm Street Oil City PA 16301	French Creek WWF	Crawford Conservation District 814-763-5269
City of Titusville Crawford County	PAG02 0020 10 003	Stacey Louge International Waxes Inc. 1100 East Main Street Titusville PA 16354	Oil Creek CWF	Crawford Conservation District 814-763-5269

General Permit Type—PAG-3

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Town of Bloomsburg, Columbia County	PAR134801 (Stormwater)	Rieter Automotive N.A. Carpet 480 W. 5th Street Bloomsburg, PA 17815	UNT to Fishing Creek, WWF	Northcentral Regional Office Water Management Program 208 West Third Street, Suite 101 Williamsport, PA 17701 (570) 327-3666
Williamsport City, Lycoming County	PAR204832 (Stormwater)	High Steel Structures, Inc 3501 W. 4th Street Williamsport, PA 17701	UNT to Daugherty's Run, WWF	Northcentral Regional Office Water Management Program 208 West Third Street, Suite 101 Williamsport, PA 17701 (570) 327-3666

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Towanda Borough, Bradford County	PAR114811 (Stormwater)	E.I. Dupont de Nemours & Co., Inc. RR Box 15, Patterson Blvd. Towanda, PA 18848	Sugar Creek, WWF	Northcentral Regional Office Water Management Program 208 West Third Street, Suite 101 Williamsport, PA 17701 (570) 327-3666
Penn Hills Township Allegheny County	PAR806149	United States Postal Service 11650 Penn Hills Drive Pittsburgh, PA 15235-9721	Duffs Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 412-442-4000
Burrell Township Indiana County	PAR316107	FMC Technologies Integrated Services 451 Innovation Drive Blairsville, PA 15717-8096	UNT of Blacklick Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 412-442-4000

General Permit Type—PAG-4

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

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>
West Salem Township Mercer County	PAG041004	Tomilyn Miller P. O. Box 834 Greenville, PA 16125	Unnamed tributary to Big Run, 20-A	DEP NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 814/332-6942

*General Permit Type—PAG-9**Facility Location:*

<i>Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Ross Township, Monroe County	PAG09-2207	J.R. Borger, Inc. Septic Service RR1, Box 1473 Saylorsburg, PA 18353	J.R. Borger, Inc. Septic Service RR1, Box 1473 Saylorsburg, Pa 18353	PA DEP NERO 2 Public Square Wilkes-Barre, PA 18701-1915 570-826-2511

*General Permit Type—PAG-12**Facility Location & Municipality*

<i>Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Rockefeller Township, Northumberland Co.	PAG124837	Joe Jurgielewicz & Son, LTD. 1016 Plum Creek Rd. Sunbury, PA 17801	Plum Creek - #6B Cold Water Fishery	Northcentral Regional Office Water Management Program 208 West Third Street, Suite 101 Williamsport, PA 17701 (570) 327-3664

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on applications received under the Safe Drinking Water Act for the construction, substantial modification or operation of a public water system.

Any person aggrieved by these actions may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. § 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. 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 Environmental Hearing Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

If you want to challenge this action, your appeal must reach the Board within 30 days. You do not need a lawyer to file an appeal with the Board.

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

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110

Permit No. 6710515 MA, Minor Amendment, Public Water Supply.

Applicant	Race Horse Tavern
Municipality	Jackson Township
County	York
Responsible Official	James Delisio, Owner 738 Biesecker Road Thomasville, PA 17364
Type of Facility	Installation of sodium hypo chlorite disinfection system to replace a UV system to meet 4-log virun inactivation.
Consulting Engineer	Charles A Kehew II, P.E. James R. Holley & Assoc., Inc. 18 South George St. York, PA 17401
Permit to Construct Issued:	9/22/2010

Operations Permit issued to: **East Donegal Township Municipal Authority**, 7360083, East Donegal Township, **Lancaster County** on 8/23/2010 for the operation of facilities approved under Construction Permit No. 3610524 MA.

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

Permit No. 4907502-T2—Transfer Public Water Supply.

Applicant	Cherokee Pharmaceuticals, LLC —a Subsidiary of Merck Sharpe and Dohme Corporation
[Township or Borough]	Riverside Borough
County	Northumberland

Responsible Official	Mr. Didier Colombeen Merck & Co., Inc. Two Merck Drive P. O. Box 200 Whitehouse Station, NJ 08889
Type of Facility	Public Water Supply—Operation
Consulting Engineer	N/A
Permit Issued Date	September 22, 2010
Description of Action	Operation of the Cherokee Water Treatment Plant, including: a raw water intake on the North Branch of the Susquehanna River; four 400,000 gallon presettling basins; gas pre- and post-chlorination, polyphosphate, caustic soda, potassium permanganate, clay and Cat-Floc chemical feed systems; three upflow clarifiers; two clarified water storage basins (290,000 and 110,000 gallons); Filtration System No. 1 consisting of three Permutit filters; Filtration System No. 2 consisting of two gravity sand multicell (3 cells) filters; two clearwells; two 500,000 gallon finished water storage tanks; and the distribution system.

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant	Canton Borough Authority
[Township or Borough]	Canton Borough
County	Bradford
Responsible Official	Mr. Lester Hilfiger Canton Borough Authority P. O. Box 237 Canton, PA 17724
Type of Facility	Public Water Supply—Operation
Consulting Engineer	N/A
Permit Issued Date	September 27, 2010
Description of Action	4-log inactivation of viruses at Entry Point 101 (Well No. 1) and Entry Point 102 (Well No. 2).

Permit No. 4909501-T1—Transfer Public Water Supply.

Applicant	Cherokee Pharmaceuticals, LLC —a Subsidiary of Merck Sharpe and Dohme Corporation
[Township or Borough]	Riverside Borough
County	Northumberland
Responsible Official	Mr. Didier Colombeen Merck & Co., Inc. Two Merck Drive P. O. Box 200 Whitehouse Station, NJ 08889
Type of Facility	Public Water Supply—Operation
Consulting Engineer	N/A
Permit Issued Date	September 22, 2010

Description of Action Operation of TOC removal facilities, including a change in flocculant from Cat-Floc to Nalco 8140 and the addition of the polymer, Nalclear 7768.

Permit No. Minor Amendment—Operation Public Water Supply.

Applicant **The Pennsylvania State University**

[Township or Borough] College Township

County **Centre**

Responsible Official Ian M. Salada, P.E.
The Pennsylvania State University
101P Office of Physical Plant
University Park, PA 16802

Type of Facility Public Water Supply—Operation

Consulting Engineer N/A

Permit Issued Date September 28, 2010

Description of Action 4-log inactivation of viruses at Entry Point 107 (Well Nos. UN33, UN34, and UN35) and Entry Point 108 (Well Nos. UN16, UN17, UN24 and UN26), and Entry Point 109 (UN16, UN17, UN24 and UN26).

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

Operations Permit issued to: **Windber Area Authority**, 1700 Stockholm Avenue, Windber, PA 15963, (PWSID #4560013) Richland Township, **Cambria County** and Windber Borough, **Somerset County** on September 27, 2010 for the operation of facilities approved under Construction Permit # 5608504.

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

Permit No.1010501, Public Water Supply

Applicant **Keystone Senior Care, LLC**

Township or Borough Penn Township

County **Butler County**

Type of Facility Public Water Supply

Consulting Engineer Dennis J. Duryea, PE

Permit to Construct Issued 09/16/2010

Operations Permit issued to **Victoria Estates Mobile Home Park**, PWSID #6200065, Summit Township, **Crawford County** on September 22, 2010. Action is for operation of the water supply treatment facilities at the mobile home park, issued in response to an inspection conducted by Department personnel on August 4, 2010, and in accordance with construction permit 2009506, issued March 19, 2010.

WATER ALLOCATIONS

Actions taken on applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth.

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

WA 10-153G, Water Allocations. Pennsylvania American Water Company, 800 West Hershey Park Drive, Hershey, PA 17033, Jefferson Township, **Butler County**. A Modification Order is issued modifying the existing Water Allocation permit. PAWC is extending its service area by connecting its system to the existing Saxonburg system in Butler County.

Permit Issued: 9/24/2010

STORMWATER MANAGEMENT

Action on plans submitted under the Stormwater Management Act of October 4, 1978 (32 P. S. § 680.9)

Bureau of Watershed Management, P. O. Box 8775, Harrisburg, Pennsylvania 17105-8775

The Act 167 Countywide Stormwater Management Plan for Washington County, submitted by **Washington County**, was approved on September 22, 2010. This plan applies to all watersheds and all areas within Washington County.

The Act 167 Countywide Stormwater Management Plan for Cumberland County, submitted by **Cumberland County**, was approved on September 29, 2010. This plan applies to all watersheds and all areas within Cumberland County.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act, act of January 24, 1966, P. L. 1535, as amended, 35 P. S. § 750.5

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

Plan Location: on the south side of Union Deposit Road, 3000 feet east of Grandview Road.

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
South Hanover Township	111 W Third St, Hummelstown PA 17033	Dauphin County

Plan Description: The approved plan, in the name of James W. Henry, provides for a Small Flow Treatment Facility with discharge to an unnamed tributary to Swatara Creek. The SFTF will serve an existing residence currently served by a malfunctioning on-lot disposal system. 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 owner.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Hopewell Township	415 Three Square Hollow Road, Newburg, PA 17240	Cumberland

Plan Description: Approval of a revision to the Official Sewage Plan of Hopewell Township, Cumberland County. The Newburg-Hopewell Volunteer Fire Company proposes the construction of a new firehouse and a future community center to be served by municipal sewers. The pro-

posal calls for a privately owned and maintained pump station and a 2" low pressure sewer extension along State Road 641 (Newville Road) to connect this development to existing sanitary sewer manhole 2. The ultimate proposed sewage flows will be 3,795 gallons per day (17 EDU's) to be treated at the Newburg-Hopewell Joint Authority's Wastewater Treatment Facility. The proposed development is located at the southeast intersection of State Road 641 (Newville Road) and State Road 4033 (Lovers Lane). The Department's review of the sewage facilities update revision has not identified any significant impacts resulting from this proposal.

HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

Public Notice of Proposed Settlement Agreement

Herceg Landfill Site Bushkill and Upper Nazareth Townships, Northampton County

Pursuant to Section 1113 of the Pennsylvania Hazardous Sites Cleanup Act, Act of October 18, 1988, P. L. 756, No. 108, 35 P. S. §§ 6020.101—6020.1305 (HSCA), notice is hereby provided that the Pennsylvania Department of Environmental Protection (Department) has entered into a settlement agreement with the Mamie M. Herceg Revocable Trust ("Herceg Trust") and George R. Herceg and James S. Herceg as Trustees (collectively, the "Trustees" or "Settlers"). The Site is located along Levis and Gower Roads in Bushkill and Upper Nazareth Townships, Northampton County, Pennsylvania.

From the 1950s to March 1981, the Site operated as an unpermitted, unlined municipal waste landfill. The landfill covers approximately 16 acres of a property of about 27 acres in a rural area straddling the borders of Bushkill and Upper Nazareth Townships. The Department conducted investigations to define the nature and extent of any release or threatened release of hazardous substances and/or contaminants at the Herceg Landfill. The past and present conditions at the Herceg Landfill identified in the investigative reports compiled in the administrative record constitute a release or threat of a release of hazardous substances and/or contaminants. The Department determined that a response was and is necessary to abate the release or threat of a release.

The settlement is for \$200,000 for past Department response costs. The specific terms of the settlement are set forth in the settlement agreement (Agreement) between the Department and the Settlers, which is available for public review and comment. The Department will receive and consider comments relating to the Agreement for sixty (60) days from the date of this Public Notice. The Department has the right to withdraw its consent to the Agreement if the comments disclose facts or considerations which indicate that the Agreement is inappropriate, improper, or not in the public interest. After the public comment period, the Department's settlement with the Settlers shall be effective upon the date that the Department notifies the Settlers, in writing, that the Agreement is final and effective in its present form, and that the Department has filed a response to significant written public comments on the Agreement, or that no such comments were received.

Copies of the Agreement are available for inspection at the Bushkill Township Municipal Building, 1114 Bushkill Center Road, Nazareth, Pennsylvania 18064 and the Department's Bethlehem District Office, 4530 Bath Pike,

Bethlehem, Pennsylvania 18017. Comments may be submitted, in writing, to Jeremy Miller, Department of Environmental Protection, Hazardous Sites Cleanup Section, 2 Public Square, Wilkes-Barre, PA 18701. Further information may be obtained by contacting Jeremy Miller at 570-826-2511. TDD users may contact the Department through the Pennsylvania Relay Services at 800-645-5984.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the Act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or non-residential exposure factors, a description of the remediation performed, and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report, and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of 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, please contact the Environmental Cleanup Program Manager in the Department of Environmental Protection 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 listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401

Former NVF Company, Kenneth Square Borough, **Chester County**. Paul Miller, P. E., Environmental Alliance, Inc, 660 Yorklyn Road, Hockessin, DE 18707 on behalf of George Beer, Rockhooper, LLP, 722 Yorklyn Road, Hockessin, DE 19797 has submitted a Remedial Investigation and Cleanup Plan concerning remediation

of site groundwater and soil contaminated with chlorinated solvents. The report is intended to document remediation of the site to meet the Site Specific Standard.

Sugarhouse Casino, City of Philadelphia, **Philadelphia County**. Christopher Orzechowski, P.G., Keating Environmental Management, 123 John Robert Thomas Drive, Exton, PA 19341, Megan M. Garner, Keating Environmental Management, 123 John Robert Thomas Drive, Exton, PA 19341 on behalf of Terrance J. McKenna, P. E., HSP Gaming, LP, c/o Keating Consulting, LLC., The Phoenix, 1600 Arch Street, Suite 300, Philadelphia PA 19103 has submitted a Remedial Investigation and Cleanup Plan concerning remediation of site groundwater contaminated with chlorinated solvents. The report is intended to document remediation of the site to meet the Site Specific Standard.

2830 North American Street, City of Philadelphia, **Philadelphia County**. Michelle Flowers, REPSG, 6901 Kingsessing Avenue, Suite 201, Philadelphia, PA 19142, Mark Kuczynski, REPSG, 6901 Kingsessing Avenue, Suite 201, Philadelphia, PA 19142 on behalf of Stephanie Hernandez, Congreso de Latinos Unidos, Inc./2800 American Street Company, Philadelphia, PA 19133 has submitted a Remedial Investigation concerning remediation of site groundwater and soil contaminated with other organics. The report is intended to document remediation of the site to meet the Site Specific Standard.

375 Commerce Drive, Upper Dublin Township, **Montgomery County**. Thomas Jones, Penn Environmental & Remediation, Inc., 2755 Bergey Road, Hatfield, PA 19440, on behalf of Mark Weingberg, Weinberg Family Trust, 803 Camarillo Road, Suite C, Camarillo, CA 93013 has submitted a Final Report concerning remediation of site groundwater and soil contaminated with chlorinated solvents. The report is intended to document remediation of the site to meet the Site Specific Standard.

Cloud Landfill, Lower Oxford Township, **Chester County**. Douglass Schott, Brickhouse Environmental, 515 South Franklin Street, West Chester, PA 19382 on behalf of Andrew Jones & Michael Losito, Reedville Farms, LP, P. O. Box 485/181 Willow Street, Toughkenamon, PA 19374 has submitted a Final Report concerning remediation of site groundwater contaminated with chlorinated solvents. The report is intended to document remediation of the site to meet the Site Specific Standard and State Health Standard.

Verizon Doylestown Work Center, Plumstead Township, **Bucks County**. Sean M. Damon, P.G. Langan Engineering & Environmental, P. O. Box 1569, Doylestown, PA 18901, James McElman, P.G., Verizon Environmental Management, 7701 East Telecom Drive, MC:FLTDSB1M, Temple Terrace, FL 33637 on behalf of Mike Nickerson, Central Bucks School District, 320 West Swamp Road, Doylestown, PA 18901 has submitted a Final Report concerning remediation of site soil contaminated with release of organics. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Vengrofski Residence, Falls Township, **Bucks County**. Chris Miceli, VERTEX Environmental Insurance Services, 15 South Main Street, Marlboro, NJ 07746, Thomas Schultz, Lewis Environmental Group P. O. Box 639, Royersford, PA 19468 on behalf of Frank Vengrofski, 103 Burgess Avenue, Falls Township, PA 19067 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with no. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

MA Bruder & Sons Inc, City of Philadelphia, **Philadelphia County**. David Kershner, KU Resources, Inc, 22 South Linden Street, Duquesne, PA 15110 on behalf of Kenneth H. Stroebel, The Sherwin-Williams Company, 101 Prospect Avenue, NW, Cleveland, OH 44115-1075 has submitted a Final Report concerning remediation of site groundwater and soil contaminated with other organics. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Mutter & Stauffer Auto, East Greenville Borough, **Montgomery County**. Richard D. Trimpi, Trimpi Associates, Inc, 1635 Old Plains Road, Pennsburg, PA 18073 on behalf of Andrew W. Meadows, CCM LLC, 1511 North Adam Street, Pottstown, PA 19464 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with leaded and unleaded gasoline. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Universal Concrete Products, West Pottsgrove Township, **Montgomery County**. Richard D. Trimpi, Trimpi Associates, Inc, 1635 Old Plains Road, Pennsburg, PA 18073 Andrew W. Meadows, CCM LLC, 1511 North Adam Street, Pottstown, PA 19464 on behalf of Donald L. Faust, 400 Old Reading Pike, Inc., 400 Old Pike Reading Pike, Suite 100, Stowe, PA 19464 has submitted a Final Report concerning remediation of site groundwater and soil contaminated with no. 6 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

One Bala Plaza, Lower Merion Township, **Montgomery County**. Jeffery K. Walsh, Penn E&R, 2755 Bergey Road, Hatfield, PA 19460 on behalf of James Rementer, Bala Plaza Property, Inc, 231 Saint Asaph's Road, Bala Cynwyd, PA 19004 has submitted a Final Report concerning remediation of site groundwater and soil contaminated with no. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

1104 Greentree Lane, Lower Merion Township, **Montgomery County**. Michael S. Welsh, Welsh Environmental, Inc., 131 Clearview Drive, Downingtown, PA 19335, Staci Cottone, J&J Spill Service and Supplies, Inc, P. O. Box 370, Blue Bell, PA 19422 on behalf of Bruce Lev, 1104 Greentree Lane, Narberth, PA 19072 has submitted a Final Report concerning remediation of site soil contaminated with unleaded gasoline. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Atkinson Residence, Morrisville Borough, **Bucks County**. Thomas M. Hippensteal, P.G., Envirosearch Consultants, Inc, P. O. Box 940, Springhouse, PA 19477 on behalf of Christian Atkinson, 679 Hillcrest Avenue, Morrisville, PA 19067 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with petroleum. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Lonza Inc., Whitmarsh Township, **Montgomery County**. Stephen Brower, environmental Standards, Inc, 114 Valley Forge Road, Valley Forge, PA 19482 on behalf of Peter McGinnis, Lonza, Incorporated, 900 River Road, Conshohocken PA 19428 has submitted a Remedial Investigation Report Risk Assessment and Final Report concerning remediation of site soil contaminated with other organics. The report is intended to document remediation of the site to meet the Site Specific Standard.

Northeast Region: Environmental Cleanup Program, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Pocono MHP-Lot 29, 740 Jumper Road, Plains Township, **Luzerne County**. Daniel Nealon, Quad Three Group, Inc., 72 Glenmaura National Boulevard, Moosic, PA 18507 has submitted a Final Report (on behalf of their client, REO Trust, LLC 1300 Market Street, Suite 201, Lemoyne, PA 17043-1420), concerning the remediation of soil found to have been impacted by No 2 fuel oil as a result of a slow leak in the copper line fitting at the base of a 275-gallon aboveground storage tank. The report was submitted in order to document attainment of the residential Statewide Health Standard for soil. A public notice regarding the submission of the Final Report was published in *The Times Leader* on August 31, 2010.

Krause Dodge, 4315 Route 309 and 4309 Carl Street, North Whitehall Township, **Lehigh County**. James J. Koval, HDR Engineering, Inc., 1720 Spillman Drive, Suite 280, Bethlehem, PA 18015 has submitted a Final Report (on behalf of his client, Paul Kobal, P. O. Box 192, Schnecksville, PA 18078), concerning the remediation of soil found to have been impacted by lead and arsenic as a result of historical operations at the site, which included the operation of a former service station. The report was submitted to document attainment of the Non-Residential Statewide Health Standard for soil. A public notice regarding the submission of the Final Report was published in *The Morning Call* on September 2, 2010.

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 combined report is intended to document remediation of the site to meet a combination of the residential Statewide Health and Site-Specific standards. This notice corrects the notice published September 18, 2010.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701

Paoli Transportation Truck Fire. Laporte Township, **Sullivan County**. Northridge Group Inc., 1172 Ridge Road, Northumberland, PA 17857 on behalf of Paoli Transportation, PO Box 335, Badin, NC 28009 has submitted a Final Report within 90-days of the release concerning remediation of site soil contaminated with diesel fuel. The report is intended to document remediation of the site to meet the Statewide Health Standard.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481

Quality Carriers and FLEET Transit Truck Accident, Ridgway Township, **Elk County**. Environmental Alliance, 117 Olde Farm Office Road, Suite 135, Duncansville, PA 16635 on behalf of Quality Carriers, Inc., 4041 Parks Oaks Boulevard, Tampa, FL 33610-9524 and FLEET Transit, Inc., 3400 Fairfield Road, Baltimore, MD 21226-1088 has submitted a Final Report concerning remediation of site soils contaminated with Benzene, Toluene, Ethylbenzene, MtBE, Naphthalene, Cumene, 1,2,4 Trimethyl benzene, 1,3,5 Trimethyl benzene, and Aluminum. The report is intended to document remediation of the site to meet the Statewide Health Standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 PA Code § 250.8, Administration of the Land Recycling and Environmental Remediation Standards Act (Act) requires the Department of Environmental Protection (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 non-residential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the Act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report, and cleanup plan. A remedial investigation report includes conclusions from the site investigation; concentration of regulated substances in environmental media; benefits of 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 provisions of the Act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, please contact the Environmental Cleanup Program Manager in the Department of Environmental Protection 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 listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401

Gasoline Station, City of Philadelphia, **Philadelphia County**. Jeffery Bauer, Whitestone Associates, Inc. 1600 Manor Drive, Suite 220, Chalfont, PA 18914 on behalf of

Arnold S. Lurie, Tremont Partnership, Two Neshaminy Interplex, Suite 305, Trevoise, PA 19053 has submitted a Final Report concerning the remediation of site soil contaminated with unleaded gasoline. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on August 23, 2010.

Verizon Bryn Mawr Garage, Lower Merion Township **Montgomery County**. Sean Damon, Langan Engineering & Environmental Services, P. O. Box 1569, Doylestown, PA 18901, James McElman Verizon Environmental Management, 7701 East Telecom Drive, MC:FLTDSB1M, Temple Terrace, FL 33637 on behalf of Paul Aschkenasy, Blank Aschkenasy Properties, LLC, 300 Four Falls Corporate Center, 300 Conshohocken, Sate Road, Suite 360 West Conshohocken, PA 19428 has submitted a Final Report concerning the remediation of site soil contaminated with chlorinated solvents. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on September, 1, 2010.

Sunoco Pipeline—Twin Oaks Pump Station, Upper Chichester Township **Delaware County**. Tiffani Doerr, Aquaterra Technologies, Inc, P. O. Box 744, West Chester, PA 19381 on behalf of Gus Borkland, Sunoco Logistics, LP, 1735 Market Street has submitted a Final Report concerning the remediation of site soil contaminated with unleaded gasoline. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on September 15, 2010.

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

Packerton Yards, Intersection of Packerton Hollow Road & Route 209, Mahoning Township, **Carbon County**. James J. Koval, HDR Engineering, Inc., 1720 Spillman Drive, Bethlehem, PA 18015 submitted a combined Remedial Investigation Report/Cleanup Plan/Final Report (on behalf of his client, Carbon County Office of Economic Development, P. O. Box 291, Jim Thorpe, PA 18229), concerning the remediation of soil found to have been impacted by lead, arsenic, selenium, and benzo (a) pyrene. The Final Report section of the combined report documented attainment of the Statewide Health Standard for soils within the Greenspace area of the site and was approved on September 20, 2010.

RESIDUAL WASTE GENERAL PERMITS

Permits Revoked under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Residual Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to operate residual waste processing facilities and/or the beneficial use of residual waste other than coal ash.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

General Permit No. WMGR090R026. Highway Materials, Inc., 1750 Walton Road, Blue Bell, PA 19422-0465.

General Permit Number WMGR090 authorizes the processing and beneficial use of reclaimed asphalt pavement (RAP) materials as a roadway construction material. The permittee requested the general permit be revoked due to the utilization of the reclaimed asphalt pavement (RAP) materials under the industry-wide co-

product determination. Central Office revoked this general permit on September 24, 2010.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to constrict, modify, reactivate or operate air contamination sources and associated air cleaning devices.

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

Contact: Mark Gorog and Barb Hatch, Environmental Engineer Managers—Telephone: 412-442-4163/5226

GP5-63-00942A: MarkWest Liberty Midstream and Resources, LLC (1515 Arapahoe Street Tower 2, Suite 700, Denver, CO 80202-2126) on August 31, 2010, to allow the installation and initial operation of a third natural gas-fired compressor engine and replacement dehydrator and re-boiler under GP-5 for natural gas production at their Dryer Compressor Station, in Independence Township, **Washington County**.

GP5-26-00588A: Laurel Mountain Midstream Operating LLC (1550 Coraopolis Heights Road, Suite 140, Moon Township, PA 15108) on September 7, 2010, to allow the installation and operation of a new natural gas production facility consisting of three natural gas-fired compressor engines rated at 1380 bhp each and controlled by oxidation catalysts, one triethylene glycol dehydrator with re-boiler, and one 20,000 gallon water storage tank. The facility will be authorized under GP-5 for natural gas production, named the Shamrock Compressor Station, and be located in German Township, **Fayette County**.

GP5-63-00958: MarkWest Liberty Midstream and Resources, LLC (1515 Arapahoe Street Tower 2, Suite 700, Denver, CO 80202-2126) on September 2, 2010, to allow the installation and operation of a new natural gas production facility consisting of two natural gas-fired compressor engines rated at 1380 bhp each and controlled by oxidation catalysts, one glycol dehydrator unit controlled by a flare, and three 400-bbl condensate tanks controlled by a vapor recovery unit. The facility will be authorized under GP-5 for natural gas production, named Welling Compressor Station, and be located in Buffalo Township, **Washington County**.

GP5-63-00960: MarkWest Liberty Midstream and Resources, LLC (1515 Arapahoe Street Tower 2, Suite 700, Denver, CO 80202-2126) on September 2, 2010, to allow the installation and operation of a new natural gas production facility consisting of three natural gas-fired compressor engines rated at 1380 bhp each and controlled by oxidation catalysts, one glycol dehydrator unit controlled by a flare, and three 400-bbl condensate tanks controlled by a vapor recovery unit. The facility will be authorized under GP-5 for natural gas production, named Baker Compressor Station, and be located in Amwell Township, **Washington County**.

GP9-63-00958: MarkWest Liberty Midstream and Resources, LLC (1515 Arapahoe Street Tower 2, Suite 700, Denver, CO 80202-2126) on September 2, 2010, to allow the installation and operation of a generator driven by a diesel-fired engine rated at 197 bhp at their proposed Welling Compressor Station to be located in Buffalo Township, **Washington County**.

GP9-63-00960: MarkWest Liberty Midstream and Resources, LLC (1515 Arapahoe Street Tower 2, Suite

700, Denver, CO 80202-2126) on September 2, 2010, to allow the installation and operation of a generator driven by a diesel-fired engine rated at 197 bhp at their proposed Baker Compressor Station to be located in Amwell Township, **Washington County**.

GP9-63-00954B: MarkWest Liberty Midstream and Resources, LLC (1515 Arapahoe Street Tower 2, Suite 700, Denver, CO 80202-2126) on September 27, 2010, to allow the continued operation of a generator driven by a diesel-fired engine rated at 197 bhp as an emergency unit only at their Brigich Compressor Station located in Chartiers Township, **Washington County**.

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

Contact: Mark Gorog, New Source Review Chief—Telephone: 814-332-6940

GP-42-220B: Dakota Extractions LLC—Bradford Station (Route 219, Bradford, PA 16701) on September 22, 2010, for the operation of natural gas fired compressor engines (BAQ-GPA/GP-5) in Foster Township, **McKean County**.

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920

46-0172C: Gemalto, Inc. (101 Park Drive, Montgomeryville, PA 18936) on September 21, 2010, for installation of a new Sakurai Screen Press at an existing facility in Montgomeryville, **Montgomery County**. This press is being installed to replace an existing screen press. The primary pollutant of concern is volatile organic compound (VOC) emissions. Gemalto is categorized as a synthetic minor facility. The Plan Approval will contain recordkeeping and operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13A and 127.32.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

Contact: Sachin Shankar, New Source Review Chief—Telephone: 484-250-5920

09-0007C: Waste Management Disposal Services of PA, Inc. (1000 New Ford Mill Road, Morrisville, PA 19067) on September 20, 2010, to operate a landfill in Falls Township, **Bucks County**.

09-0203: AE Polysilicon Corp. (150 Roebing Road, Fairless Hills, PA 19030) on September 23, 2010, to operate an ultra high purity polysilicon in Falls Township, **Bucks County**.

15-0122A: Kennett Square Specialties, LLC. (556 East South Street, P. O. Box 652, Kennett Town, PA

19348) on September 23, 2010, to operate a spent mushroom growth media-fired boiler in Kennett Township, **Chester County**.

46-313-146: Penn Color, Inc. (2755 Bergey Road, Hatfield, PA 19440) on September 23, 2010, to operate (2) two dust collectors in Hatfield Township, **Montgomery County**.

09-0213: DeNucci Excavating Corp. (2807 Old Rodgers Road, Bristol, PA 19007) on September 24, 2010, to modify an existing plan approval for a portable crusher and associated diesel-fired engine in Bristol Township, **Bucks County**. The plan approval is being modified to authorize the operation of the portable crusher at multiple temporary locations and the return to its permanent site location, provided certain additional conditions contained in the plan approval are met. The pollutant of concern from the proposed operation is fugitive particulate matter. Emissions will be controlled by a water spray dust suppression system. The Plan Approval will contain recordkeeping and operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

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

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

67-05083: Calpine Mid Merit LLC (PO Box 6066 92 DC 72, Newark, DE 19714-6066) on September 22, 2010, to construct an electric generating plant in Peach Bottom Township, **York County**. This plan approval was administratively amended due to a change of ownership. This is Revision 2 of the plan approval.

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

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

65-302-071: ArcelorMittal-Monessen, LLC, (345 Donner Avenue, Monessen, PA 15062) on September 25, 2010, with an expiration date of March 25, 2011, to allow for continued temporary operation of two (2) coke oven gas/natural gas boilers at the Monessen Coke Plant, in the City of Monessen, Westmoreland

Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes Barre, PA 18711-0790

Contact: Norman Frederick, Facilities Permitting Chief—Telephone: 570-826-2507

35-00008: Gentex Corp. (PO Box 315, Carbondale, PA 18407) on September 27, 2010, for surface coating of helmets operation in Fell, **Lackawanna County**. This is a renewal of a Title V Operating Permit. As a major source, the facility is subject to the Title V permitting requirements of the Clean Air Act Amendments as adopted by the Commonwealth under 25 Pa. Code, Chapter 127, Subchapter G. The Title V Operating Permit includes emission restrictions, work practice standards and testing, monitoring, recordkeeping, and reporting requirements to ensure compliance with all applicable Federal and State air quality regulations.

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

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

06-05066: Exide Technologies (PO Box 14294, Reading, PA 19612-4294) on September 23, 2010, to operate a secondary lead smelter facility in the Borough of Laureldale and Muhlenberg Township, **Berks County**. The Title V permit was renewed.

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

Contact: Matthew Williams, Facilities Permitting Chief—Telephone: 814-332-6940

10-00267: Alcoa Commercial Windows LLC—previously Three Rivers Aluminum Co. (71 Progress Avenue, Cranberry Industrial Park, Cranberry Township, PA 16066-3596) on September 22, 2010, to reissue the Title V Operating Permit in Cranberry Township, **Butler County**. The facility manufactures metal doors, sash and trim products. The facility's major emission sources include tellkamp line & binks booth, coated-extrusion bake oven, fill line adhesive application, assembly, extrusion press and preheaters, 2750-ton extruder with preheater, extrusion aging ovens, caustic anodizing tank, acid anodizing tanks (3), facility space heating, miscellaneous natural gas usage, pyrolysis oven, two tone coating process line with oven and seven degreasers. The facility is a major facility due to its potential to emit of volatile organic compound. The compliance assurance monitoring (CAM) is included in the permit. The facility is also subject to 40 C.F.R. Part 63, Subpart M for miscellaneous metal parts and products.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401

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

09-00175: Hanson Aggregates BMC, Inc.—Penns Park Aggregate Plant (852 Swamp Road, Penns Park, PA 18943) on September 21, 2010, for renewal of a synthetic minor operating permit issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code § 127.450 in Wrightstown Township, **Bucks County**. This facility is a non-Title V facility. The Operating Permit will contain record keeping requirements, monitoring requirements and operating conditions designed to keep the facility operating within the allowable emission limits and all applicable air quality requirements.

46-00157: DANA Driveshaft Products, LLC. (1040 Center Avenue, Pottstown, PA 19464-6007) on September 23, 2010, for operation of a metal machining operation in Pottstown Borough, **Montgomery County**. The renewal permit is for a non-Title V (State only) facility. The major source of air emissions are: spray and dip coating operations, and parts washers. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

09-00139: Safety-Kleen Systems, Inc. (77 Towpath Road, Fairless Hills, PA 19030) on September 23, 2010, for operation of a drum washing and solvent recovery facility in Falls Township, **Bucks County**. This action is an operating permit renewal for a non-Title V (Stage only) facility. The major sources of air emissions are two (2) return/fill stations and six (6) volatile organic liquid storage tanks. The renewal will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

15-00115: QVC, Inc. (1200 Wilson Drive, West Chester, PA 19380) on September 23, 2010, for operation of multiple combustion sources at their facility in West Goshen Township, **Chester County**. This action is a renewal of the permit for a non-Title V (Synthetic Minor) facility. There are no proposed changes to equipment or operating conditions. The permit will continue to include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes Barre, PA 18711-0790

Contact: Ray Kempa, New Source Review Chief—Telephone: 570-826-2507

48-00070: Prime Conduit, Inc. (23240 Chagrin Boulevard, Suite 405, Cleveland, OH 44122-7302) on September 20, 2010, to manufacture polyvinyl chloride pipe (PVC) used as conduit for electrical and telecommunication cable applications in Upper Nazareth Township, **Northampton County**. This is an initial State-Only Natural Minor operating permit. The State-Only operating permit includes emissions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

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

Contact: Thomas J. Hanlon, Chief, East Permitting Section—Telephone: 717-705-4862 or Daniel Husted, Chief, West Permitting Section—Telephone: 717-949-7935

38-05019: AES Ironwood, LLC (305 Prescott Road, Lebanon, PA 17042-9178) on September 23, 2010, for operation of a turbine electric generating facility in South Lebanon Township, **Lebanon County**. A minor modification was made to the Title V Permit to redefine normal operation of their facility's two turbines from 85% of full load to 70% to better support the PJM electric grid. No changes in emissions are expected from this action.

36-03121: Cadmus Journal Services, Inc. (3575 Hempland Road, Lancaster, Pennsylvania 17601-6912) on September 16, 2010, this state only operating permit was administratively amended to include the provisions of Plan Approval No. 36-03121C for the printing facility in West Hempfield Township, **Lancaster County**.

De Minimis Emissions Increases Authorized under 25 Pa. Code § 127.449.

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

Contact: Matthew Williams, New Source Review Chief—Telephone: 814-332-6940

24-00016: Keystone Powdered Metal Company (289 Eberl Street, St Marys, PA 15857), for its facility located

Date	Source	PM10 (tons)	SOx (tons)	NOx (tons)	VOC (tons)	CO (tons)
9/21/10	Induction Heat Treater #3892	0.016	0	0	0.016	0
Total Reported Increases		0.016	0	0	0.016	0
Allowable		0.6 ton/source 3 tons/facility	1.6 tons/source 8 tons/facility	1 ton/source 5 tons/facility	1 ton/source 5 tons/facility	4 tons/source 20 tons/facility

Operating Permits Denied, Terminated, Suspended or Revoked under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.431 and 127.461.

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

Contact: Matthew Williams, New Source Review Chief—Telephone: 814-332-6940

10-00342: Mine Safety Appliances (PO Box 426, Pittsburgh, PA 15230) on September 22, 2010, for revocation of their State Only Operating Permit for the operation of the surgical appliances and supplies manufacturing facility in Forward Township, **Butler County**. The sources in the permit (rubber bonding room) and control device (catalytic oxidizer) were removed from service. This operating permit was revoked because of a permanent shutdown of operations at the facility and expired lease on September 12, 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—1396.31); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); the Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the NPDES permit application and, if noted, the request for a section 401 Water Quality Certification. Mining activity permits issued in response to such applications will also address the application permitting requirements of the following statutes; the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003.

Coal Applications Returned

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

in St Marys City, **Elk County**. The De minimis emission increase is for construction of an Induction Heat Treater (No. 3892) and Smog Hog (No. 4246). In addition, this source is exempt from plan approval as it complies with 25 Pa. Code § 127.14(a)(8). The Department hereby approves the De minimis emission increase. The following table is a list of the De minimis emission increases as required by 25 PA Code 127.449(i). This list includes the De minimis emission increases since the State Only Operating Permit issuance on January 26, 2009.

37891601 and NPDES Permit # PA0214817, Shamrock Minerals Corporation, (RR 2—Box 2139, Wampum, PA 16157), to renew the permit for the Shamrock Prep Plant in New Beaver Borough, **Lawrence County** and related NPDES permit. No additional discharges. Application received: July 18, 2006. Application returned: September 23, 2010.

Coal Permits Actions

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

30841317. Consol Pennsylvania Coal Company, LLC, (P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323), to revise the permit for the Enlow Fork Mine in East Finley Township, **Washington County**, ACOE Pittsburgh. Claysville, PA Quadrangle USGS map from N:9.52 inches; W:1.21 inches to N:10.78 inches; W:0.65 inches. This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15), and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize the stream restoration for pooling or flow loss due to longwall mining in three areas of Templeton Fork. Application received: June 1, 2009. Permit issued: September 21, 2010.

56961301 and GP12-56961301-R11, RoxCOAL, Inc., (P. O. Box 149, Friedens, PA 15541), to revise the permit for the Sarah Mine in Jenner Township, **Somerset County** to establish an emission inventory for a coal processing facility receiving raw coal from the mine based on peak production of 500,000 tons of raw coal per year. Emission sources include coal transfers, screens, conveyors, storage piles development and wind erosion, truck loading, and vehicular travel on paved haul road, approval is authorized under General Permit BAQ-GPA/GP12 and is required to meet all applicable limitations, terms, and conditions of authorization GP12-56961301-R11. No additional discharges. Application received: June 30, 2010. Permit issued: September 21, 2010.

30841316, Consol PA Coal Company, LLC, (1525 Pleasant Grove Road, P. O. Box J, Claysville, PA 15323), to revise the permit for the Bailey Mine and Prep Plant in Richhill Township, **Greene County**, ACOE Pittsburgh. Wind Ridge, PA Quadrangle, from N:3.78 inches; W:11.09 inches to N:4.70 inches; W:10.60 inches. This is a Chapter

105 Water Obstruction and Encroachment permit application (Stream Module 15), and 401 Water Quality Certification reviewed as part of the mining permit revision application to authorize the stream restoration for stream flow loss resulting from longwall mining to one area of unnamed tributary 32596 of North Fork of Dunkard Fork. Application received: April 19, 2010. Permit issued: September 23, 2010.

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

56000104 and NPDES Permit No. PA0235270, PBS Coals, Inc., P. O. Box 260, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface and auger mine, in Brothersvalley Township, **Somerset County**, affecting 147.2 acres. Receiving stream(s): unnamed tributary to/and Tubs Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: July 20, 2010. Permit issued: September 20, 2010.

32040105 and NPDES No. PA0249637. KMP Associates, Inc., 1094 Lantz Road, Avonmore, PA 15618, permit renewal for reclamation only of a bituminous surface mine in Conemaugh Township, **Indiana County**, affecting 6.7 acres. Receiving stream(s): unnamed tributaries to/and Big Run; Blacklegs 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. Permit issued: September 22, 2010.

11990103 and NPDES No. PA0235091. Paul F. Becker Coal Company, 1593 Old Route 22, Duncansville, PA 16635, permit renewal for reclamation only of a bituminous surface mine in Elder Township, **Cambria County**, affecting 21.2 acres. Receiving stream(s): unnamed tributary to Brubaker Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: May 24, 2010. Permit issued: September 22, 2010.

56080101 and NPDES No. PA0262579. Coal Loaders, Inc., 210 East Main Street, P. O. Box 556, Ligonier, PA 15658, commencement, operation and restoration of a bituminous surface mine in Stonycreek Township, **Somerset County**, affecting 123.2 acres. Receiving stream(s): Stonycreek River classified for the following use(s): cold water fishery. The first downstream potable water supply intake from the point of discharge is Hooversville Borough intake. Application received: January 30, 2008. Permit issued: September 22, 2010.

32940109 and NPDES No. PA0212954. KMP Associates, Inc., 1094 Lantz Road, Avonmore, PA 15618, permit renewal for the continued operation and restoration of a bituminous surface and auger mine in Young Township, **Indiana County**, affecting 133.1 acres. Receiving stream(s): unnamed tributary to/and Whisky Run classified for the following use(s): cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: January 7, 2010. Permit issued: September 23, 2010.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, 724-925-5500

03080101 and NPDES Permit No. PA0251364. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Transfer of permit formerly issued to Mountain Coal Co., Inc., for continued operation and reclamation of

a bituminous surface mining site located in Redbank Township, **Armstrong County**, affecting 125.0 acres. Receiving streams: Unnamed tributaries to Mahoning Creek. Application received: March 16, 2010. Transfer permit issued: September 23, 2010.

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

16050110 and NPDES Permit No. PA0257982. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767) Renewal of an existing bituminous strip and auger operation in Redbank Township, **Clarion County** affecting 65.0 acres. This renewal is issued for reclamation only. Receiving streams: Unnamed tributaries to Pine Creek. Application received: July 15, 2010. Permit Issued: September 20, 2010.

16850116 and NPDES Permit No. PA0106577. Terry Coal Sales, Inc. (P. O. Box 58, Distant, PA 16223) Renewal of an existing bituminous strip, auger and coal ash disposal operation in Porter Township, **Clarion County** affecting 648.5 acres. This renewal is issued for reclamation only. Receiving streams: Unnamed tributary to Leisure Run, Leisure Run and Long Run. Application received: July 26, 2010. Permit Issued: September 23, 2010.

33890122 and NPDES Permit No. PA0207705. Terry Coal Sales, Inc. (P. O. Box 58, Distant, PA 16223) Renewal of an existing bituminous strip and auger operation in Knox, Oliver & Rose Townships, **Jefferson County** affecting 200.0 acres. This renewal is issued for reclamation only. Receiving streams: Unnamed tributary to Lick Run and Lick Run. Application received: May 10, 2010. Permit Issued: September 22, 2010.

4674SM8 and NPDES Permit No. PA0258920. Fairview Coal Company (P. O. Box R, Ridgway, PA 15853) Revision to add an NPDES Permit to an existing bituminous strip operation in Fox Township, **Elk County** affecting 63.4 acres. Receiving streams: Benninger Run. There are no potable surface water supply intakes within 10 miles downstream. Application received: August 4, 2010. Permit Issued: September 22, 2010.

24100101 and NPDES Permit No. PA0258822. P. and N. Coal Co., Inc. (P. O. Box 332, Punxsutawney, PA 15767) Commencement, operation and restoration of a bituminous strip operation in Jay Township, **Elk County** affecting 102.2 acres. Receiving streams: Unnamed tributary to Kersey Run. Application received: February 18, 2010. Permit Issued: September 23, 2010.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

17080110 and NPDES No. PA0256862. Larry Fahr Coal Co. (2062 Ashland Road, Osceola Mills, PA 16666). Commencement, operation and restoration of a bituminous surface mine located in Decatur Township, **Clearfield County** affecting 11.0 acres. Receiving stream: Morgan Run classified for cold water fishery. There are no potable water supply intakes within 10 miles downstream. Application received: July 15, 2008. Permit issued: September 21, 2010.

17100102 and NPDES No. PA0257273. King Coal Sales, Inc. (P. O. Box 77, Philipsburg, PA 16866). Commencement, operation and restoration of a bituminous surface mine located in Cooper Township, **Clearfield County** affecting 61.0 acres. Receiving streams: Sulphur Run classified for cold water fishery and Moshannon Creek classified for Trout stocked fishery. There are not

potable water supply intakes within 10 miles downstream. Application received: January 29, 2010. Permit issued: September 17, 2010.

Noncoal Permits Actions

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

25102802. Tom Parmenter Excavating (10889 Smith Road, North East, PA 16428) Commencement, operation and restoration of a small sand & gravel operation in North East Township, **Erie County** affecting 5.0 acres. Receiving streams: Twenty Mile Creek. Application received: August 12, 2010. Permit Issued: September 23, 2010.

42100801. Kelly Crosby (307 East Oak Street, Coudersport, PA 16915) Commencement, operation and restoration of a small bluestone operation in Liberty Township, **McKean County** affecting 5.0 acres. Receiving streams: Allegheny River. Application received: August 18, 2010. Permit Issued: September 23, 2010.

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

58092806. William M. Ruark, (P. O. Box 27, Meshoppen, PA 18630), commencement, operation and restoration of a quarry operation in Dimock Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received: September 14, 2009. Permit issued: September 24, 2010.

58092807. William M. Ruark, (P. O. Box 27, Meshoppen, PA 18630), commencement, operation and restoration of a quarry operation in Dimock Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received: September 14, 2009. Permit issued: September 24, 2010.

58092808. William M. Ruark, (P. O. Box 27, Meshoppen, PA 18630), commencement, operation and restoration of a quarry operation in Dimock Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received: September 14, 2009. Permit issued: September 24, 2010.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (43 P.S. §§ 151—161); and 25 Pa. Code § 211.124 (relating to blasting activity permits). Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Actions

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

64104113. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for a single dwelling in Berlin Township, **Wayne County** with an expiration date of September 12, 2011. Permit issued: September 20, 2010.

58104048. John Brainard, (3978 SR 2073, Kingsley, PA 18826), construction blasting for the Cosner 1H Well Pad in Springville Township, **Susquehanna County** with an expiration date of July 31, 2011. Permit issued: September 22, 2010.

36104152. Keystone Blasting Service, (15 Hopeland Road, Lititz, PA 17543), construction blasting for Camp Andrews in Drumore Township, **Lancaster County** with an expiration date of December 30, 2010. Permit issued: September 22, 2010.

67104114. John W. Gleim, Jr., Inc., (625 Hamilton Street, Carlisle, PA 17013), construction blasting for Windy Heights in Carroll Township, **York County** with an expiration date of September 17, 2011. Permit issued: September 22, 2010.

64104114. Austin Powder Northeast, LLC, (25800 Science Park Drive, Beachwood, OH 44122), construction blasting for Davidson Gas Pad in Scott Township, **Wayne County** with an expiration date of September 14, 2011. Permit issued: September 23, 2010.

67104115. M & J Explosives, Inc., (PO Box 608, Carlisle, PA 17013), construction blasting for Tool Dynamics in York City, **York County** with an expiration date of September 30, 2011. Permit issued: September 23, 2010.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection 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 of Environmental Protection has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of Sections 301-303, 306 and 307 of the FWPCA 33 U.S.C. §§ 1311-1313, 1316 and 1317, and that the construction will not violate applicable Federal and State Water Quality Standards.

Any person aggrieved by these actions may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. 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 Environmental Hearing 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 any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS NOTICE TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

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 Floodplain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 P. S. §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued:

WATER OBSTRUCTIONS AND ENCROACHMENTS

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

E23-478. Fairmount Park Commission. One Parkway, 10th Floor, 1515 Arch Street, Philadelphia, PA 19102, Haverford Township, **Delaware County**, ACOE Philadelphia District.

To perform the following water obstruction and encroachment activities within Carroll Park:

1. To stabilize and maintain an approximately 750-foot long segment of the eroded intermittent channel from Carroll Road to Cobbs Creek (WWF, MF).

2. To enhance an existing wetland (PFO) adjacent to the eroded channel with aesthetically pleasing and functioning native wetland community vegetation. The total wetland area will increase from 0.29 acre to 0.41 acre.

3. To regrade and maintain fill in the floodplain of Cobbs Creek.

The site is located approximately 500 feet southwest of the intersection of Carroll and Farwood Roads (Lansdowne, PA, USGS Quadrangle N: 18.82 inches; W: 4.40 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)].

E23-485. Agnes Irwin School, S. Ithan Road & Conestoga Road, Rosemont, PA 19010, Radnor Township, **Delaware County**, ACOE Philadelphia District.

To construct and maintain 150 linear feet of a 7-foot wide by 2.3-foot rise concrete box culvert stream enclosure in and along the 100-year floodplain of Kirks Run, associated with the Anger Irwin School's building expansion.

The site is located near the intersection of Ithan and Conestoga Roads, (Norristown, PA USGS Quadrangle N: 5 inches; W: 14 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)].

E51-241. Philadelphia Regional Port Authority (PRPA), 3460 North Delaware Avenue, Philadelphia, PA 19134, Philadelphia, **Philadelphia County**, ACOE Philadelphia District.

To demolish and remove the abandoned and dilapidated residential buildings including foundations, basements, utility lines, asphalt roadways, etc. within the floodplain of the Delaware River (WWF, MF) associated with Mustin Housing Demolition project. This work includes grading associated with construction of stormwater swales to preserve positive drainage to the river.

The site is located along Delaware River near Admiral Peary Way and Mustin Avenue (Philadelphia, PA USGS Quadrangle N: 2.625 inches; W: 3.75 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)].

E09-942. Township of Falls, 188 Lincoln Highway, Suite 100, Fairless Hills, PA 19030, Falls Township, **Bucks County**, ACOE Philadelphia District.

To construct and maintain a 160-foot long by 30-foot wide boat ramp in and along the 100-year floodway of the Delaware River in Quaker Penn Park. This work includes approximately 0.91 acre dredging of sediment from the river. Also, approximately 0.24 acre of fill will be placed in the floodway associated with maintenance of the existing access road and stormwater management facility improvements. The site is located approximately 1 mile southwest of the intersection of Bordertown Road and Pennsbury Road (Trenton West, PA; N: 1.75 inches; W: 2.85 inches).

E46-1040. Hatfield Township Municipal Authority, 3200 Advance Lane, Colmar, PA 18915, Hatfield Township, **Montgomery County**, ACOE Philadelphia District.

To perform the following water obstruction and encroachment activities along the West Branch of the Neshaminy Creek (WWF, MF) associated with Neshaminy Interceptor Replacement Project:

1. To relocate/replace an existing 21-inch diameter sanitary sewer pipe and associated manholes with the proposed 36-inch diameter PV pipe and associated manholes, away from the edge of the stream temporarily impacting 0.30 acre of wetlands.

2. To modify, restore, and maintain an existing stormwater swale at approximately station 0+50 associated with the proposed sewer crossing.

3. To modify and maintain two existing culverts associated with the proposed sewer crossing.

4. To stabilize and maintain portions of the existing streambank along the length of this project.

The project commences approximately 1,047 feet northeast of the intersection of S.R. 0463 and Orvilla Road and runs parallel to the stream in the south easterly direction and ends at the Hatfield Township Municipal Authority Wastewater Treatment Plant approximately 1,582 feet east of S.R. 0309 in Hatfield Township, Montgomery County (Telford, PA, USGS Quadrangle N:3.43 inches; W:2.56 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)].

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, Telephone 570-826-2511.

E13-164. Pennsylvania Department of Transportation Engineering District 5-0, 1002 Hamilton Street, Allentown, PA 18101-1013, Franklin Township, **Carbon County**, Army Corps of Engineers Philadelphia District.

To place fill in a de minimus area of wetlands equal to 0.02 acre; to remove the existing structure; and to construct and maintain a single-span, pre-stressed concrete bulb-tee beam bridge having a total normal clear span of 161.8 feet and an average underclearance of 4.2

feet over Pohopoco Creek (HQ-CWF, MF). The project also includes a slight shift in the alignment of the bridge upstream from its current location. The project is located at SR 2007, Segment 0070, Offset 0063, just north of the intersection of US 209 and SR 2007 (Lehighon, PA Quadrangle Latitude: 40°50'21"N; Longitude: 75°40'05"W).

Northwest Region: Watershed Management Program Manager, 230 Chestnut Street, Meadville, PA 16335.

E10-463 PA DOT, District 10-0, 2550 Oakland Ave, P. O. Box 429, Indiana, PA 15701, in Slippery Rock Township, **Butler County**, ACOE Pittsburgh, (Slippery Rock, PA Quadrangle N: 41°, 02', 14"; W: 80°, 01', 48")

to conduct the following activities associated with the replacement of the Doughertys Mills Bridge on S.R. 0173, Section 250, Segment 0060, Offset 0615 at Doughertys Mills approximately 1.5 miles southeast of Slippery Rock in Slippery Rock Township, Butler County.

1. To remove the existing two span concrete arch structure and to construct and maintain a steel plate girder bridge having a clear, normal span of 196.5 feet and an underclearance of approximately 14 feet across Slippery Rock Creek.

2. To extend the existing 82-foot long, 7-foot wide by 4.4-foot high stone arch by adding approximately 15 feet onto the upstream end and to remove the existing concrete inlet control structure and construct a new concrete inlet control structure within the existing mill race channel near the left end of the existing Park Dam (DEP File No. D10-062).

3. To install a temporary construction access causeway extending from the right (north) bank of Slippery Rock Creek to approximately mid channel for removal of the existing pier.

EROSION AND SEDIMENT CONTROL

The following Erosion and Sediment Control (ESCP) Permit(s) have been issued.

Any person aggrieved by these actions may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P. S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. 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 Environmental Hearing 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 any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS NOTICE TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

Northwest Region, Oil and Gas Program Manager, 230 Chestnut St., Meadville, PA 16335

ESCGP-1 #ESX10-083-0017—Minard Run Pad A
 Applicant Triana Energy, LLC
 Contact Rachelle A. King
 Address 900 Virginia Street East, Suite 400
 City Charleston State WV Zip Code 25301
 County McKean Township(s) Lafayette and Bradford(s)
 Receiving Stream(s) and Classification(s) Eas Branch
 Tunuqwant Creek—HQ—CWF, Railroad Run & Minard Run—EV—CWF/EV—CWF

ESCGP-1 #ESX10-053-0012—Warrant 3159 #1400-5H
 Applicant East Resources Management, LLC
 Contact Jefferson Long
 Address 190 Thorn Hill Road
 City Warrendale State PA Zip Code 15086
 County Forest Township(s) Jenks(s)
 Receiving Stream(s) and Classification(s) UNT to Log Run / Ohio River Basin in PA—Clarion River (List R), East Branch Millstone Creek—Millstone Creek—HQ—CWF

ESCGP-1 #ESX10-065-0012—Kuntz Pad
 Applicant Exco Resources (PA), LLC
 Contact Joel S. Heiser
 Address 3000 Ericsson Drive, Suite 200
 City Warrendale State PA Zip Code 15086
 County Jefferson Township(s) Henderson(s)
 Receiving Stream(s) and Classification(s) UNT to Stump Creek—CWF/ Stump Creek Watershed—CWF

STORAGE TANKS

SITE-SPECTIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 504, 1101—1102) and under 25 Pa Code Chapter 245, Subchapter C, have been issued by the Bureau of Waste Management, Director, PO Box 8763, Harrisburg, PA 17105-8763.

<i>SSIP Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
10-06-008	Sunoco Partners Marketing & Terminals, L.P. 525 Fritztown Road Sinking Spring, PA 19608 Attn: Jed A. Werner	Berks	Spring Township	2 ASTs storing biodiesel	67,680 gallons total

SPECIAL NOTICES

Stream Restoration and Wetland Mitigation Project

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

CDO-001. Consol Pennsylvania Coal Company LLC, 1525 Pleasant Grove Road, P. O. Box J, Claysville, PA 15323. Templeton Fork Stream Restoration and Wetland Mitigation Project in East Finley Township, **Washington County**, Pittsburgh ACOE District (Claysville, PA Quadrangle, project area centroid N: 8.34 inches, W: 2.80 inches). The applicant proposes to (1) restore 40,413 linear feet of impaired stream reaches within the Templeton Fork watershed, and (2) construct three wetland mitigation areas in the flood plain of Templeton Fork along a 1.9 mile-long reach with a total of 6.77 acres of diverse wetland habitats. Templeton Fork is classified a Trout Stocked Fishery. This is a Chapter 105 Water Obstruction and Encroachment permit application and 401 Water Quality Certification request. 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. Application received: June 10, 2010. Permit issued: September 22, 2010.

Approval of Registration/Applications under General Permit for Short-Term Construction Project BMR-GP-103

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, 814-342-8200

41101001. E & J Construction LLC. (1842 Masten Road, Canton, PA 17724), authorizations to extract stone in McNett Township, **Lycoming County** to provide fill material to the Chesapeake Energy Well Pads Construction Project. Receiving streams: North Pleasant Stream, Pleasant Stream. Authorization approved: September 20, 2010.

[Pa.B. Doc. No. 10-1937. Filed for public inspection October 8, 2010, 9:00 a.m.]

Certification Program Advisory Committee Special Meeting

The Certification Program Advisory Committee (CPAC) will hold a special meeting on Tuesday, October 26, 2010, at 10 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. This meeting is being rescheduled since the September 16, 2010, CPAC meeting did not have a quorum. The meeting topics will be the Operator Certification Program Manual and the external program review.

Questions concerning the agenda or meeting materials may be directed to Cheri Sansoni at (717) 772-5158 or csansoni@state.pa.us. The agenda for the meeting and materials will be available through the Public Participation Center on the Department of Environmental Protection's (Department) web site at www.depweb.state.pa.us.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact Cheri Sansoni at (717) 772-5158, or through the Pennsylvania AT&T Relay Service at (800) 654-5984

(TDD users), or (800) 654-5988 (voice users), to discuss how the Department may accommodate their needs.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-1938. Filed for public inspection October 8, 2010, 9:00 a.m.]

Proposed Revision to Pennsylvania's State Implementation Plan for Regional Haze, Including 2008 Allegheny County Health Department Order; Public Hearings

Section 169A of the Clean Air Act (CAA) (42 U.S.C.A. § 7491) declares a National goal for the prevention and remediation of impairment of visibility from manmade air pollution in Class I areas (these are areas of great scenic importance) throughout the country, including many well known National parks and wilderness areas. The United States Environmental Protection Agency (EPA) promulgated the "Regional Haze Regulations" (also referred to as the Regional Haze Rule) on July 1, 1999 (64 FR 35714). In response to a partial vacatur of the 1999 rule, EPA published the "Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations" on July 6, 2005 (70 FR 39104). These amendments apply to the provisions of the Regional Haze Rule that require emission controls known as Best Available Retrofit Technology (BART) for industrial facilities emitting air pollutants that reduce visibility. In response to a second judicial challenge to the Regional Haze Rule, EPA promulgated the "Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations" on October 13, 2006 (71 FR 60612).

The Regional Haze Rule requires states to establish goals and strategies for improving visibility in all of the country's 156 Class I National parks and wilderness areas. The EPA is requiring all states to revise their State Implementation Plans (SIPs) to reduce emissions of sulfur dioxide, oxides of nitrogen, and particulate matter—especially fine particulate matter—all of which contribute to regional haze and affect Class 1 areas. The CAA and the BART Rule require that any "major stationary source" that has the potential to emit 250 tons or more of a visibility-impairing air pollutant that was put in place between August 7, 1962, and August 7, 1977, and whose operations fall within one or more of the 26 specifically listed source categories would comprise a BART-eligible source and must install BART for controlling emissions. States must address BART in their Regional Haze SIPs.

The Department of Environmental Protection (Department) is seeking public comment on its proposed revision to the SIP to address Regional Haze. The proposed Regional Haze SIP revision is available on the Department's web site at www.depweb.state.pa.us (choose keyword: "Clean air plans"), or through the contact persons listed as follows. The Regional Haze Rule (40 CFR 51.308(i)) requires states to consult with the Federal Land Managers (FLMs) at least 60 days prior to the scheduled public hearing on the proposed Regional Haze SIP revision. Section 169A(d) of the CAA requires states to include a summary of the conclusions and recommendations of the FLMs in the notice to the public. The following FLMs provided comments to the Department: the United States Department of the Interior's Fish and

Wildlife Service and the National Park Service, and the United States Department of Agriculture's Forest Service. A copy of all comments submitted by the FLMs to the Department, and the Department's responses, is available in Appendix AA of the proposed SIP revision for Regional Haze.

The Department is also specifically seeking comment on an Enforcement Order included in the proposed Regional Haze SIP as Appendix BB. The Order was issued by the Allegheny County Health Department on April 24, 2008, to Eastman Chemical Resins, Inc., stating that "Eastman shall immediately and permanently render volatile organic storage tanks 17, 18, 61 & 63 unusable for the storage of VOCs." As a result of the Order, the total emissions from Eastman Chemical Resins, Inc. do not exceed 250 tons per year for any of the eligible visibility impairing pollutants. Therefore, sources at the Eastman Chemical Resins facility are not subject to the BART requirements. Inclusion of the Order in the final SIP revision approved by EPA will render it Federally enforceable.

The Department will hold three public hearings to receive comments on the proposed Regional Haze SIP revision:

- November 9, 2010, at 1 p.m. at the Department's Southeast Regional Office, 2 East Main Street, Norristown, PA.
- November 9, 2010, at 1 p.m. at the Department's Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA.
- November 10, 2010, at 1 p.m. at the Department's Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA.

Persons wishing to present testimony at a hearing should contact Shaniqua Smith, P. O. Box 8468, Harrisburg, PA 17105, (717) 787-9702 or shanismith@state.pa.us to reserve a time. Persons who do not reserve a time will be able to testify as time allows. Witnesses should keep testimony to 10 minutes and should provide two written copies of their statement at the hearing. Notice of the proposed SIP revision will also be published in newspapers of general circulation.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact Shaniqua Smith at (717) 787-9702 or shanismith@state.pa.us. TDD users may contact the Pennsylvania AT&T Relay Service at (800) 654-5984 to discuss how the Department can best accommodate their needs.

The Department must receive comments no later than November 12, 2010. Written comments should be sent to the attention of Jane Mahinske, Division of Air Resource Management, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468, jmahinske@state.pa.us. Use "Regional Haze" in the subject line.

JOHN HANGER,
Secretary

[Pa.B. Doc. No. 10-1939. Filed for public inspection October 8, 2010, 9:00 a.m.]

DEPARTMENT OF HEALTH

Governor's Council on Physical Fitness and Sports Committee; Public Meeting

The Governor's Council on Physical Fitness and Sports will hold a meeting on Thursday, October 21, 2010, from 9:30 a.m. to 3 p.m. The meeting will be held at the Center for Independent Living, 207 House Avenue, Suite 107, Camp Hill, PA 17011.

For additional information, or for persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodations to do so, contact Jessica Zilka, Bureau of Health Promotion and Risk Reduction, Room 1000, Health and Welfare Building, Harrisburg, PA at (717) 787-6214, or for speech and/or hearing impaired persons V/TT (717) 783-6514, or the Pennsylvania AT&T Relay Service at (800) 654-5984.

This meeting is subject to cancellation without notice.

MICHAEL HUFF,
Acting Secretary

[Pa.B. Doc. No. 10-1940. Filed for public inspection October 8, 2010, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

Current Prevailing Wage Act Debarments

The following contractors have been determined to have intentionally violated the Pennsylvania Prevailing Wage Act (act) (43 P. S. §§ 165-1—165-17). This notice is published for the information and convenience of public bodies subject to the act. Under section 11(e) of the act (43 P. S. § 165-11(e)), these contractors, or either one of them, or any firms, corporations or partnerships in which either one of these contractors has an interest, shall be awarded no contract for 3 years after the date listed.

<i>Contractor</i>	<i>Address</i>	<i>Date of Debarment</i>
Eam-J Drywall, Inc. and Jorge L. Martinez, Individually	38 Gap Newport Pike Avondale, PA 19311	9/22/2010

SANDI VITO,
Secretary

[Pa.B. Doc. No. 10-1941. Filed for public inspection October 8, 2010, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Finding Montgomery County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Director of the Bureau of Design makes the following written finding:

The Federal Highway Administration and the Department of Transportation (Department) are planning to replace the existing structure that carries Terwood Road over an unnamed tributary to Pennypack Creek in Lower Moreland Township, Montgomery County. The project will require the use of the Jarrett Estate Property, which has been determined eligible for inclusion in the National Register and, therefore, qualifies as a Section 4(f)/Section 2002 resource.

In accordance with section 2002 of The Administrative Code of 1929 establishing the Department, a Level 1b Categorical Exclusion Evaluation (CEE) has been developed for the subject project along with a Determination of Section 4(f) De Minimis Use/Section 2002 No Adverse Use document to evaluate the potential environmental impacts caused by the subject project. The document also serves as the Section 2002 Evaluation. The approved documents are available in the CE/EA Expert System.

Based upon studies, there is no feasible and prudent alternative to the proposed action. Mitigation measures will be taken to minimize harm as stipulated in the Level 1b CEE and the Determination of Section 4(f) De Minimis Use/Section 2002 No Adverse Use document.

The environmental, economic, social and other effects of The proposed project, as enumerated in section 2002 of The Administrative Code of 1929 have been considered. It has been concluded that there is no feasible and prudent alternative to the project as designed, and all reasonable steps have been taken to minimize the effects.

BRIAN G. THOMPSON, P. E.,
Director
Bureau of Design

[Pa.B. Doc. No. 10-1942. Filed for public inspection October 8, 2010, 9:00 a.m.]

Invitation to Submit Applications Under the Automated Red Light Enforcement Transportation Enhancement Grants Program

The Department of Transportation (Department) published at 39 Pa.B. 4435 (August 1, 2009) a proposed rulemaking relating to the establishment of a Transportation Enhancement Grant Program to be funded from revenues generated from automated red light enforcement (ARLE) system revenues under 75 Pa.C.S. § 3116 (relating to automated red light enforcement systems in first class cities).

On September 16, 2010, the Independent Regulatory Review Commission approved the Department's final-form rulemaking and the final-form rulemaking has been deemed approved by the House and Senate Transportation Committees. As the Department moves forward through the final steps of promulgation, the Department is inviting city, county and municipal governments, and other local boards or bodies with authority to enact laws relating to traffic in this Commonwealth, to submit ARLE grant applications for the initial period until November 30, 2010, in accordance with the parameters delineated in the proposed rulemaking, so that the review of grant applications may proceed and grants may be awarded expeditiously after the rulemaking becomes effective after final approval by the Office of Attorney General and upon publication in the *Pennsylvania Bulletin*.

Applications can be obtained at <ftp://ftp.dot.state.pa.us/public/Bureaus/HighwaySafety/ARLE%20Grant%20Application.doc>.

Additional guidance information can be found on the Department's Traffic Signal Resource Portal located at [http://www.dot.state.pa.us/Portal%20Information/Traffic%20Signal%20Portal%20\(9-14-2009\)_files/Automated_Red_Light_Enforcement.htm](http://www.dot.state.pa.us/Portal%20Information/Traffic%20Signal%20Portal%20(9-14-2009)_files/Automated_Red_Light_Enforcement.htm).

Completed applications should be submitted electronically to ARLE_Grants@state.pa.us and followed by the submission of a hard copy. Any questions should be directed to Larry Shifflet, Director, Bureau of Program Development and Management, 400 North Street, 6th Floor, Harrisburg, PA 17120, (717) 787-2862, ARLE_Grants@state.pa.us.

No grant offer can be awarded until after the final-form rulemaking completes the regulatory review process and the final rulemaking is published in the *Pennsylvania Bulletin*.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 10-1943. Filed for public inspection October 8, 2010, 9:00 a.m.]

Medical Advisory Board Meeting

The Medical Advisory Board (Board) will meet on Friday, November 5, 2010. The meeting will begin at 10 a.m. and is open to the public at the Riverfront Office Center, Transportation University, 1101 South Front Street, Harrisburg, PA. Chairperson Janet L. Dolan will preside.

Members of the public interested in addressing the Board with a concern relating to medical regulations must contact Chris Miller at (717) 783-4534 by Friday, October 29, 2010. These concerns will be discussed during "Items from the Floor" on the Agenda, which will open at 1:30 p.m.

The meeting location is accessible to persons with disabilities. Persons with special needs or requiring special aids are also requested to contact Chris Miller at (717) 783-4534 prior to the meeting so that disability needs may be accommodated.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 10-1944. Filed for public inspection October 8, 2010, 9:00 a.m.]

ENVIRONMENTAL HEARING BOARD

Fish and Boat Commission v. DEP and RRI Energy Mid-Atlantic Power Holdings, LLC, Permittee; EHB Doc. No. 2010-153-M

The Fish and Boat Commission has appealed the issuance by the Department of Environmental Protection of an NPDES permit to RRI Energy Mid-Atlantic Power Holdings, LLC for a facility in Bradford Township, Clearfield 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 Pennsylvania

Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.81 (relating to intervention). Copies of the Board's rules of practice and procedure are available upon request from the Board.

THOMAS W. RENWAND,
Chairperson

[Pa.B. Doc. No. 10-1945. Filed for public inspection October 8, 2010, 9:00 a.m.]

FISH AND BOAT COMMISSION

Triploid Grass Carp Permit Application

Under 58 Pa. Code § 71.7 (relating to triploid grass carp), the Fish and Boat Commission (Commission) may issue permits to stock triploid grass carp in Commonwealth waters. Triploid grass carp are sterile fish that may, in appropriate circumstances, help control aquatic vegetation. The Commission has determined consistent with 58 Pa. Code § 71.7(e)(3) to seek public input with respect to any proposed stockings of triploid grass carp in waters having a surface area of more than 5 acres.

Interested persons are invited to submit written comments, objections or suggestions about the notice to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 10 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted. Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

The following application to stock triploid grass carp in waters having a surface area of greater than 5 acres is currently undergoing staff review:

<i>Applicant</i>	<i>Water</i>	<i>Location of Water</i>	<i>Description of Water</i>	<i>Nature of Vegetation to be Controlled</i>
Jeff Jensen	Spring Lake	Athens Township Crawford County	21 acre lake which discharges into a UNT to Muddy Creek, then into French Creek, then into the Allegheny River and then into the Ohio River	<i>Myriophyllum spicatum</i> <i>Ceratophyllum demersum</i> <i>Potamogeton crispus</i> <i>Potamogeton amplifolius</i>

JOHN A. ARWAY,
Executive Director

[Pa.B. Doc. No. 10-1946. Filed for public inspection October 8, 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>
16-47	Bureau of Professional Occupational Affairs	9/22/10	10/21/10

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
16A-4818	Schedule of Civil Penalties— Funeral Directors and Funeral Establishments State Board of Funeral Directors Continuing Education Enforcement	9/22/10	10/21/10
8-14	Department of General Services State Metrology Laboratory Fee Schedule	9/27/10	11/4/10
57-266	Pennsylvania Public Utility Commission Licensing Requirements for Natural Gas Suppliers	9/28/10	11/4/10

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 10-1947. Filed for public inspection October 8, 2010, 9:00 a.m.]

INSURANCE DEPARTMENT

Capital BlueCross and Capital Advantage Insurance Co.; Individual Direct Pay Comprehensive Major Medical Benefit contract with a \$750 or \$1,500 Deductible for HIPAA and HCTC Eligible Individuals; Capital Filing No. 10-XXXX; Rate Filing

On September 28, 2010, the Insurance Department (Department) received from Capital BlueCross and Capital Advantage Insurance Co. a filing for a rate increase for the Individual Direct Pay Comprehensive Major Medical Benefit contract for HIPAA and HCTC Eligible Individuals with a \$750 or \$1,500 Deductible to reflect the anticipated cost of the Patient Protection and Affordable Care Act, signed into law on March 23, 2010.

The insurer requests a 6.9% rate increase to reflect these required changes.

The requested effective date of the change is January 1, 2011, although the newly mandated benefits will become effective for new policies issued on or after September 23, 2010.

Unless formal administrative action is taken prior to December 23, 2010, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's web site at www.insurance.pa.gov. To access the filing, under "How to Find..." click on "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 James Sabater, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square,

Harrisburg, PA 17120, jsabater@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. 10-1948. Filed for public inspection October 8, 2010, 9:00 a.m.]

Inter-County Health Plan, Inc.; PPACA Rate Filing

On September 13, 2010, Inter-County Health Plan, Inc. submitted a rate filing to increase the premium rates for the Group Product. The Plan proposes to increase the rates for non-grandfathered plans by 1.41% and 1.10% for grandfathered plans for two-party and family contracts for the dependant coverage to age 26 provision, and 1.19% for all contracts for the preventative care at 100% provision.

This will affect approximately 12,000 members and produce additional premium income of about \$800,000 annually. The requested effective date of the change is January 1, 2011.

Unless formal administrative action is taken prior to December 9, 2010, 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."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 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. 10-1949. Filed for public inspection October 8, 2010, 9:00 a.m.]

Inter-County Hospitalization Plan, Inc.; PPACA Rate Filing

On September 13, 2010, Inter-County Hospitalization Plan, Inc. submitted a rate filing to increase the premium rates for the Group Product. The Plan proposes to increase the rates for non-grandfathered plans by 1.41% and 1.10% for grandfathered plans for two-party and family contracts for the dependant coverage to age 26 provision, and 1.19% for all contracts for the preventative care at 100% provision.

This will affect approximately 12,000 members and produce additional premium income of about \$800,000 annually. The requested effective date of the change is January 1, 2011.

Unless formal administrative action is taken prior to December 9, 2010, 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."

A copy of the filing is also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written or e-mail comments, suggestions or objections to Cherri Sanders-Jones, Insurance Department, Insurance Product Regulation, 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. 10-1950. Filed for public inspection October 8, 2010, 9:00 a.m.]

[Correction]

Provisions of Act 51 of 2010

An error occurred in the heading to the notice which appeared at 40 Pa.B. 5560 (October 2, 2010). The heading should read as follows: Provisions of Act 51 of 2010; Notice No. 2010-10.

[Pa.B. Doc. No. 10-1910. Filed for public inspection October 1, 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 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 the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102.

Appeal of Gerald A. Peragine; file no. 10-130-90299; American States Insurance Company; Doc. No. P10-09-003; November 2, 2010, 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. 10-1951. Filed for public inspection October 8, 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 October 25, 2010. 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 of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under the application.

A-2010-2200570. Cheryl Lynn Homerosky (380 Oak Spring Road, Canonsburg, Washington County, PA 15317)—persons in limousine service, between points in Pennsylvania, which is to be a transfer of all the right authorized under the certificate issued at A-00121977 to Brian Homerosky, t/a Southpointe Limousine Service, subject to the same limitations and conditions.

Application of the following for approval to begin operating as contract carriers for transportation of persons as described under the application.

A-2010-2200219. Nepa Logistics, LLC (P. O. Box 31, Scranton, Lackawanna County, PA 18504), a limited liability company of the Commonwealth—contract carrier—persons, for Del Val Staffing, LLC, from points in the Counties of Lackawanna, Luzerne and Philadelphia, to points in Pennsylvania, and return.

Application of the following for approval to begin operating as a broker for transportation of persons as described under the application.

A-2010-2195609. Medi-Trans, Inc., t/a MTI (1350 South Powerline Road, Suite 200, Pompano Beach, Broward County, FL 33069)—a corporation of the State of Florida—for a brokerage license evidencing the Commission's approval of the right and privilege to operate as a broker, to arrange for the transportation of persons between points in Pennsylvania.

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-2010-2200372. Michael Dean Axe (1142 Lebanon Road, Manheim, Lancaster County, PA 17545)—to discontinue service as a common carrier by motor vehicle, at A-00123195, authorizing the transportation, 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 Borough of Manheim, Lancaster County and within 10 statute miles of said borough, to points in Pennsylvania, and return.

Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Caye Davis Taxi, Inc.; Doc. No. C-2010-2128692; A-00113443

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 del-

egated 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 Caye Davis Taxi, Inc., Respondent, maintains a principal place of business at 1352 East Sharpnack Street, Philadelphia, PA 19150.

2. That Respondent was issued a Certificate of Public Convenience by this Commission on January 7, 1997, at A-00113443.

3. That Respondent was advised by letter dated May 10, 2005, that its medallion authority was being transferred to the Philadelphia Parking Authority. At that time, Respondent was advised that its taxicab service which had an origin and destination outside of the City of Philadelphia remained subject to the regulatory oversight of the PA PUC.

4. That Respondent was advised by letter dated August 31, 2009, that it failed to file a valid tariff with this Commission as required by 52 Pa. Code § 23.11. Respondent was provided 60 days to file an acceptable tariff. To date, Respondent has not filed an acceptable tariff. The Bureau of Transportation and Safety's Motor Carrier Services and Enforcement Prosecutory Staff's proposed civil penalty for this violation is \$250.00.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Caye Davis Taxi, Inc., the sum of two hundred and fifty dollars (\$250.00) for the illegal activity described in the complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services & Enforcement Division
Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, 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 the Bureau will be able to prove the 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 (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial 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 (3) 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 (20) days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Each day you continue to violate any regulation, direction, requirement 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 filing an acceptable tariff and by paying the fine proposed in this Complaint by certified check or money order. The tariff must be filed with the:

Compliance Office, Bureau of Transportation and Safety
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, PA 17105-3265

The fine payment must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of an acceptable tariff and payment of the proposed fine, the complaint proceeding shall be closed.

D. If you file an Answer, which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty.

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 optional fine set forth above.

F. If you have questions regarding this Complaint or if you would like an alternative format to this Complaint (for persons with disabilities), please contact the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission, Bureau of
 Transportation and Safety v. Paul Cab Co;
 Doc. No. C-2010-2132461; A-00113415*

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 Paul Cab Co., Respondent, maintains a principal place of business at 223 Pine Street, Turnersville, NJ 08012.

2. That Respondent was issued a Certificate of Public Convenience by this Commission on February 18, 1997, at A-00113415.

3. That Respondent was advised by letter dated May 10, 2005, that its medallion authority was being transferred to the Philadelphia Parking Authority. At that time, Respondent was advised that its taxicab service which had an origin and destination outside of the City of Philadelphia remained subject to the regulatory oversight of the PA PUC.

4. That Respondent was advised by letter dated September 11, 2009, that it failed to file a valid tariff with this Commission as required by 52 Pa. Code § 23.11. Respondent was provided 60 days to file an acceptable tariff. To date, Respondent has not filed an acceptable tariff. The Bureau of Transportation and Safety's Motor Carrier Services and Enforcement Prosecutory Staff's proposed civil penalty for this violation is \$250.00.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Paul Cab Co., the sum of two hundred and fifty dollars (\$250.00) for the illegal activity described in the complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
 Motor Carrier Services & Enforcement Division
 Bureau of Transportation and Safety
 P. O. Box 3265
 Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, 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 the Bureau will be able to prove the 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 (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial 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 (3) 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 (20) days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a

Secretarial Letter imposing a penalty. Each day you continue to violate any regulation, direction, requirement 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 filing an acceptable tariff and by paying the fine proposed in this Complaint by certified check or money order. The tariff must be filed with the:

Compliance Office, Bureau of Transportation and Safety
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

The fine payment must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of an acceptable tariff and payment of the proposed fine, the complaint proceeding shall be closed.

D. If you file an Answer, which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty.

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 optional fine set forth above.

F. If you have questions regarding this Complaint or if you would like an alternative format to this Complaint (for persons with disabilities), please contact the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Y & K Cab Co.;
Doc. No. C-2010-2135199; A-00113879*

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 Y & K Cab Co., Respondent, maintains a principal place of business at 128 West Gorfrey Avenue, Philadelphia, PA 19120.

2. That Respondent was issued a Certificate of Public Convenience by this Commission on May 15, 1997, at A-00113879.

3. That Respondent was advised by letter dated May 10, 2005, that its medallion authority was being transferred to the Philadelphia Parking Authority. At that time, Respondent was advised that its taxicab service

which had an origin and destination outside of the City of Philadelphia remained subject to the regulatory oversight of the PA PUC.

4. That Respondent was advised by letter dated September 11, 2009, that it failed to file a valid tariff with this Commission as required by 52 Pa. Code § 23.11. Respondent was provided 60 days to file an acceptable tariff. To date, Respondent has not filed an acceptable tariff. The Bureau of Transportation and Safety's Motor Carrier Services and Enforcement Prosecutory Staff's proposed civil penalty for this violation is \$250.00.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Y & K Cab Co., the sum of two hundred and fifty dollars (\$250.00) for the illegal activity described in the complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services & Enforcement Division
Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, 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 the Bureau will be able to prove the 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 (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial 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 (3) 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 (20) days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Each day you continue to violate any regulation, direction, requirement 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 filing an acceptable tariff and by paying the fine proposed in this Complaint by certified check or money order. The tariff must be filed with the:

Compliance Office, Bureau of Transportation and Safety
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, PA 17105-3265

The fine payment must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of an acceptable tariff and payment of the proposed fine, the complaint proceeding shall be closed.

D. If you file an Answer, which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty.

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 optional fine set forth above.

F. If you have questions regarding this Complaint or if you would like an alternative format to this Complaint (for persons with disabilities), please contact the Compliance Office at (717) 787-1227.

Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Domack, Inc.; Doc. No. C-2010-2129741; A-00118354

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 Domack, Inc., Respondent maintains a principal place of business at 1507 Lardner Street, Philadelphia, PA 19149.
2. That Respondent was issued a Certificate of Public Convenience by this Commission on December 21, 2001, at A-00118354.
3. That Respondent was advised by letter dated May 10, 2005, that its medallion authority was being transferred to the Philadelphia Parking Authority. At that time, Respondent was advised that its taxicab service which had an origin and destination outside of the City of Philadelphia remained subject to the regulatory oversight of the PA PUC.
4. That Respondent was advised by letter dated August 31, 2009, that it failed to file a valid tariff with this Commission as required by 52 Pa. Code § 23.11. Respondent was provided 60 days to file an acceptable tariff. To date, Respondent has not filed an acceptable tariff. The Bureau of Transportation and Safety's Motor Carrier Services and Enforcement Prosecutory Staff's proposed civil penalty for this Violation is \$250.00.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Domack, Inc., the sum of two hundred and fifty dollars (\$250.00) for the illegal activity described in the complaint and order such other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
 Motor Carrier Services & Enforcement Division
 Bureau of Transportation and Safety
 P. O. Box 3265
 Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, 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 the Bureau will be able to prove the 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 (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial 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 (3) 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 (20) days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Each day you continue to violate any regulation, direction, requirement 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 filing an acceptable tariff and by paying the fine proposed in this Complaint by certified check or money order. The tariff must be filed with the:

Compliance Office, Bureau of Transportation and Safety
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, PA 17105-3265

The fine payment must be made to the Commonwealth of Pennsylvania and should be forwarded to:

Rosemary Chiavetta, Secretary
 Pennsylvania Public Utility Commission
 P. O. Box 3265
 Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of an acceptable tariff and payment of the proposed fine, the complaint proceeding shall be closed.

D. If you file an Answer, which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty.

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 optional fine set forth above.

F. If you have questions regarding this Complaint or if you would like an alternative format to this Complaint (for persons with disabilities), please contact the Compliance Office at (717) 787-1227.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-1952. Filed for public inspection October 8, 2010, 9:00 a.m.]

Telecommunications

A-2010-2201383. Verizon North Retail Co. and Spectrotel, Inc. Joint petition of Verizon North Retail Co. and Spectrotel, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North Retail Co. and Spectrotel, Inc., by its counsel, filed on September 24, 2010, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North Retail Co. and Spectrotel, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-1953. Filed for public inspection October 8, 2010, 9:00 a.m.]

Telecommunications

A-2010-2200598. Verizon North Retain Co., f/k/a Verizon North and Trans National Communications International, Inc. Joint petition of Verizon North Retain Co., f/k/a Verizon North and Trans National Communications International, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North Retain Co., f/k/a Verizon North and Trans National Communications International, Inc., by its counsel, filed on September 17, 2010, at the Pennsylvania Public Utility Commission (Commission), a joint petition for the approval of the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North Retain Co., f/k/a Verizon North and Trans National Communications International, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-1954. Filed for public inspection October 8, 2010, 9:00 a.m.]

Transfer of Customers and Assets

A-2010-2201664; A-2010-2201668; A-2010-2201669. Birch Communications, Inc., CloseCall America, Inc., and American Fiber Network, Inc. Joint application of Birch Communications, Inc., CloseCall America, Inc., and American Fiber Network, Inc. for approval of a transfer of customers and assets.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before October 25, 2010. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission's web site at www.puc.state.pa.us, and at the applicant's business address.

Applicants: Birch Communications, Inc., CloseCall America, Inc., American Fiber Network, Inc.

Through and By Counsel: Susan E. Bruce, Esquire, Shelby A. Linton-Keddie, Esquire, McNeese Wallace and Nurick, LLC, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108-1166

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-1955. Filed for public inspection October 8, 2010, 9:00 a.m.]

Transmission Lines

A-2010-2200439. PPL Electric Utilities Corporation. Letter of notification of PPL Electric Utilities Corporation with respect to the Blue Mountain No. 1 and No. 2 138 kV Transmission Tap Lines in Moore Township, Northampton County.

P-2010-2200410. PPL Electric Utilities Corporation. Petition of PPL Electric Utilities Corporation for a Finding that a Building to Shelter Control Equipment at

the Blue Mountain 138-12 kV Substation to be Constructed in Moore Township, Northampton County is reasonably necessary for the convenience or welfare of the public.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before October 25, 2010. The documents filed in support of the letter of notification and petition are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: PPL Electric Utilities Corporation

Through and By Counsel: Christopher T. Wright, John H. Isom, Post & Schell, P.C., 17 North Second Street, 12th Floor, Harrisburg, PA 17101-1601

David B. MacGregor, Post & Schell, P.C., Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, PA 19103-2808

Paul E. Russell, Associate General Counsel, PPL Services Corporation, Two North Ninth Street, Allentown, PA 18101

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-1956. Filed for public inspection October 8, 2010, 9:00 a.m.]

Water and Wastewater Services

A-2010-2201233 and A-2010-2201234. Eaton Sewer and Water Company. Application of Eaton Sewer and Water Company for approval to offer, render, furnish or supply water and sanitary wastewater services to the public in additional territory in Eaton Township, Wyoming County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before October 25, 2010. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, on the Pennsylvania Public Utility Commission's web site at www.puc.state.pa.us, and at the applicant's business address.

Applicant: Eaton Sewer and Water Company

Through and By Counsel: Judd B. Fitze, Esquire, Farr, David and Fitze, 7 Marion Street, P. O. Box H, Tunkhannock, PA 18657

ROSEMARY CHIAVETTA,
Secretary

[Pa.B. Doc. No. 10-1957. Filed for public inspection October 8, 2010, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

The Susquehanna River Basin Commission (Commission) has approved the following list of projects, during August 1, 2010, through August 31, 2010.

For further information contact Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, (717) 238-0423, Ext. 304, fax (717) 238-2436, srichardson@srbc.net; or mail inquiries to Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391

Supplementary Information

This notice lists the projects, described as follows, receiving approval for the consumptive use of water under the Commission's approval by rule process set forth in 18 CFR 806.22(e) and (f) (relating to standards for consumptive uses of water) for the time period specified previously:

Approvals By Rule Issued Under 18 CFR 806.22(e):

1. Johnson & Johnson, Pad ID: McNeil PPC Facility, ABR-201008002, Lititz Borough, Lancaster County, PA; Consumptive Use of up to 0.350 mgd; Approval Date: August 3, 2010.

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. Citrus Energy Corporation, Pad ID: Ruark East 1 1H, ABR-201008001, Washington Township, Wyoming County, PA; Consumptive Use of up to 5.000 mgd; Approval Date: August 1, 2010.

2. East Resources Management, LLC, Pad ID: McNett 708, ABR-201008003, Liberty Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 3, 2010.

3. East Resources Management, LLC, Pad ID: Clark 392, ABR-201008004, Delmar Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 3, 2010.

4. East Resources Management, LLC, Pad ID: Miller 394, ABR-201008005, Delmar Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 3, 2010.

5. Carrizo Marcellus, LLC, Pad ID: Bonnice, ABR-201008006, Jessup Township, Susquehanna County, PA; Consumptive Use of up to 1.400 mgd; Approval Date: August 3, 2010.

6. Anadarko E&P Company, LP, Pad ID: COP Tract 285 Pad F, ABR-201008007, Chapman Township, Clinton County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010, including a partial waiver of 18 CFR 806.15.

7. Chief Oil & Gas, LLC, Pad ID: Marquardt Drilling Pad #1, ABR-201008008, Davidson Township, Sullivan County, PA; Consumptive Use of up to 2.000 mgd; Approval Date: August 3, 2010.

8. Cabot Oil & Gas Corporation, Pad ID: PlonskiJ P1, ABR-201008009, Brooklyn Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: August 3, 2010.

9. Chesapeake Appalachia, LLC, Pad ID: Warren, ABR-201008010, Windham Township, Wyoming County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 3, 2010.

10. Chesapeake Appalachia, LLC, Pad ID: Lambert Farms, ABR-201008011, Forks Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 3, 2010.

11. Chesapeake Appalachia, LLC, Pad ID: Lee, ABR-201008012, Asylum Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 3, 2010.

12. Anadarko E&P Company, LP, Pad ID: COP Tract 285 Pad D, ABR-201008013, Chapman Township, Clinton County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 2, 2010.

13. Cabot Oil & Gas Corporation, Pad ID: WoodW P1, ABR-201008014, Jessup Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: August 2, 2010.

14. Chesapeake Appalachia, LLC, Pad ID: Slumber Valley, ABR-201008015, Meshoppen Township, Wyoming County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 3, 2010.

15. Anadarko E&P Company, LP, Pad ID: Charles J. McNamee Pad B, ABR-201008016, Cascade Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010.

16. Anadarko E&P Company, LP, Pad ID: Elbow Pad C, ABR-201008017, Cogan House Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010.

17. Anadarko E&P Company, LP, Pad ID: COP Tract 285 Pad H, ABR-201008018, Chapman Township, Clinton County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010, including a partial waiver of 18 CFR 806.15.

18. Anadarko E&P Company, LP, Pad ID: COP Tract 344 Pad B, ABR-201008019, Grugan Township, Clinton County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010, including a partial waiver of 18 CFR 806.15.

19. Anadarko E&P Company, LP, Pad ID: COP Tract 356 Pad H, ABR-201008020, Cummings Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010, including a partial waiver of 18 CFR 806.15.

20. Anadarko E&P Company, LP, Pad ID: Jack L. Hipple Pad A, ABR-201008021, Gamble Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010.

21. Talisman Energy USA, Inc., Pad ID: 05 009 Alderson V, ABR-201008022, Pike Township, Bradford County and Middletown Township, Susquehanna County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 3, 2010.

22. Talisman Energy USA, Inc., Pad ID: 02 100 Detweiler R, ABR-201008023, Covington Township, Tioga County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 3, 2010.

23. Anadarko E&P Company, LP, Pad ID: Maurice D. Bieber Pad A, ABR-201008024, Cascade Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 3, 2010.

24. Chesapeake Appalachia, LLC, Pad ID: Joanclark, ABR-201008025, Fox Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 4, 2010.

25. Chesapeake Appalachia, LLC, Pad ID: Felter-NEW, ABR-201008026, Wyalusing Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 5, 2010.

26. EOG Resources, Inc., Pad ID: COP Pad C, ABR-201008027, Lawrence Township, Clearfield County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 6, 2010, including a partial waiver of 18 CFR 806.15.

27. Anadarko E&P Company, LP, Pad ID: Don J. Davis Pad A, ABR-201008028, Gamble Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 6, 2010.

28. Anadarko E&P Company, LP, Pad ID: COP Tract 290 Pad B, ABR-201008029, McHenry Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 6, 2010, including a partial waiver of 18 CFR 806.15.

29. Anadarko E&P Company, LP, Pad ID: COP Tract 289 Pad D, ABR-201008030, McHenry Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 6, 2010, including a partial waiver of 18 CFR 806.15.

30. East Resources Management, LLC, Pad ID: Heyler 748, ABR-201008031, Morris and Liberty Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 6, 2010.

31. East Resources Management, LLC, Pad ID: Bauer 849, ABR-201008032, Middlebury Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 6, 2010.

32. East Resources Management, LLC, Pad ID: Davis 829, ABR-201008033, Farmington Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 6, 2010.

33. East Resources Management, LLC, Pad ID: Fish 301, ABR-201008034, Richmond Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 6, 2010.

34. EOG Resources, Inc., Pad ID: SG Pad P, ABR-201008035, Jones Township, Elk County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 6, 2010, including a partial waiver of 18 CFR 806.15.

35. Talisman Energy USA, Inc., Pad ID: 02 202 DCNR 594, ABR-201008036, Liberty Township, Tioga County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 6, 2010.

36. Talisman Energy USA, Inc., Pad ID: 02 201 DCNR 594, ABR-201008037, Liberty Township, Tioga County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 6, 2010.

37. Chesapeake Appalachia, LLC, Pad ID: Lattimer, ABR-201008038, Litchfield Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 6, 2010.

38. Chesapeake Appalachia, LLC, Pad ID: Danilchuk, ABR-201008039, Wilmot Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 11, 2010.

39. Talisman Energy USA, Inc., Pad ID: 02 205 DCNR 594, ABR-201008040, Bloss Township, Tioga County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 9, 2010.
40. Talisman Energy USA, Inc., Pad ID: 02 204 DCNR 594, ABR-201008041, Bloss Township, Tioga County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 9, 2010.
41. Talisman Energy USA, Inc., Pad ID: 02 203 DCNR 594, ABR-201008042, Liberty Township, Tioga County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 9, 2010.
42. Seneca Resources Corporation, Pad ID: DCNR Tract 595 Pad I, ABR-201008043, Bloss Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 9, 2010.
43. Seneca Resources Corporation, Pad ID: DCNR Tract 595 Pad F, ABR-201008044, Bloss Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 9, 2010, including a partial waiver of 18 CFR 806.15.
44. Seneca Resources Corporation, Pad ID: DCNR Tract 007 1H, ABR-201008045, Shippen Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.
45. EOG Resources, Inc., Pad ID: WOOD 1H Pad, ABR-201008046, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 10, 2010.
46. EOG Resources, Inc., Pad ID: Otten Pad, ABR-201008047, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 10, 2010.
47. EOG Resources, Inc., Pad ID: REITER 1H Pad, ABR-201008048, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 10, 2010.
48. EOG Resources, Inc., Pad ID: SGL 90A Pad, ABR-201008049, Lawrence Township, Clearfield County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 30, 2010.
49. Chesapeake Appalachia, LLC, Pad ID: Moore Farm, ABR-201008050, Canton Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 10, 2010.
50. Pennsylvania General Energy Co., LLC, Pad ID: COP Tract 729 Pad C, ABR-201008051, Cummings Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.
51. Pennsylvania General Energy Co., LLC, Pad ID: COP Tract 729 Pad D, ABR-201008052, Cummings Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.
52. EOG Resources, Inc., Pad ID: GARVER Pad, ABR-201008053, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 10, 2010.
53. EOG Resources, Inc., Pad ID: JANOWSKY 1H, ABR-201008054, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 10, 2010.
54. Anadarko E&P Company, LP, Pad ID: Elbow Pad A, ABR-201008055, Cogan House Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 10, 2010.
55. Anadarko E&P Company, LP, Pad ID: Brian K. Frymire Pad A, ABR-201008056, Cascade Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 10, 2010.
56. Anadarko E&P Company, LP, Pad ID: Thomas E. Smith Pad A, ABR-201008057, Gamble Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 11, 2010.
57. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 7), ABR-201008058, Burnside Township, Centre County, PA; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.
58. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 8), ABR-201008059, Burnside Township, Centre County, PA; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.
59. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 9), ABR-201008060, Burnside Township, Centre County, PA; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.
60. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 10), ABR-201008061, Burnside Township, Centre County, PA; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.
61. EXCO Resources (PA), Inc., Pad ID: COP Tract 706 (Pad 25), ABR-201008062, Burnside Township, Centre County, PA; Consumptive Use of up to 8.000 mgd; Approval Date: August 10, 2010, including a partial waiver of 18 CFR 806.15.
62. EOG Resources, Inc., Pad ID: Manzek Land Pad, ABR-201008063, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 11, 2010.
63. Seneca Resources Corporation, Pad ID: Wolfinger Pad A, ABR-201008064, Shippen Township, Cameron County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 11, 2010.
64. Seneca Resources Corporation, Pad ID: Covington Pad L, ABR-201008065, Covington Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 11, 2010.
65. Chesapeake Appalachia, LLC, Pad ID: Atgas, ABR-201008066, Leroy Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 10, 2010.
66. Chesapeake Appalachia, LLC, Pad ID: Roundtop, ABR-201008067, Colley Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.
67. Chesapeake Appalachia, LLC, Pad ID: Aikens, ABR-201008068, Litchfield Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 10, 2010.
68. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 003, ABR-201008069, Ward Township, Tioga County, PA;

Consumptive Use of up to 6.000 mgd; Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.

69. Talisman Energy USA, Inc., Pad ID: 02 012 DCNR 587, ABR-201008070, Ward Township, Tioga County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.

70. Talisman Energy USA, Inc., Pad ID: 02 016 DCNR 587, ABR-201008071, Ward Township, Tioga County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.

71. Talisman Energy USA, Inc., Pad ID: DCNR 587 02 019, ABR-201008072, Ward Township, Tioga County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 11, 2010, including a partial waiver of 18 CFR 806.15.

72. East Resources Management, LLC, Pad ID: Fuleihan 417, ABR-201008073, Delmar Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 11, 2010.

73. East Resources Management, LLC, Pad ID: Baker 897, ABR-201008074, Deerfield Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 11, 2010.

74. Range Resources—Appalachia, LLC, Pad ID: Gulf USA #40H Drilling Pad, ABR-201008075, Snow Shoe Township, Centre County, PA; Consumptive Use of up to 5.000 mgd; Approval Date: August 11, 2010.

75. Talisman Energy USA, Inc., Pad ID: 05-003 Edsell C, ABR-201008076, Pike Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 11, 2010.

76. Anadarko E&P Company, LP, Pad ID: George E. Hagemeyer Pad A, ABR-201008077, Gamble Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 11, 2010.

77. Anadarko E&P Company, LP, Pad ID: Wallis Run HC Pad A, ABR-201008078, Cascade Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 12, 2010.

78. EOG Resources, Inc., Pad ID: KINGSLEY 4H, ABR-201008079, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

79. EOG Resources, Inc., Pad ID: KINGSLEY 5H, ABR-201008080, Springfield Township, Bradford County, PA; Consumptive use of Up to 4.999 mgd; Approval Date: August 12, 2010.

80. EOG Resources, Inc., Pad ID: KINGSLEY 6H, ABR-201008081, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

81. EOG Resources, Inc., Pad ID: Rightmire 1H Pad, ABR-201008082, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

82. EOG Resources, Inc., Pad ID: RIGHTMIRE 2H Pad, ABR-201008083, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

83. EOG Resources, Inc., Pad ID: Beardslee 1V Pad, ABR-201008084, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

84. EOG Resources, Inc., Pad ID: BEARDSLEE 2H Pad, ABR-201008085, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

85. EOG Resources, Inc., Pad ID: Dodge Pad, ABR-201008086, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

86. EOG Resources, Inc., Pad ID: MELCHIONNE 1H Pad, ABR-201008087, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

87. Southwestern Energy Production Company, Pad ID: Chamberlin, ABR-201008088, Stevens Township, Bradford County, PA; Consumptive Use of up to 4.990 mgd; Approval Date: August 12, 2010.

88. Talisman Energy USA, Inc., Pad ID: Roy 03 062, ABR-201008089, Wells Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 12, 2010.

89. EOG Resources, Inc., Pad ID: NICHOLS 1H Pad, ABR-201008090, Smithfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

90. EOG Resources, Inc., Pad ID: SEAMAN 1H Pad, ABR-201008091, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

91. EOG Resources, Inc., Pad ID: McKEE Pad, ABR-201008092, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

92. EOG Resources, Inc., Pad ID: Furman Pad, ABR-201008093, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

93. EOG Resources, Inc., Pad ID: HAVEN 2 H, ABR-201008094, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 12, 2010.

94. Chesapeake Appalachia, LLC, Pad ID: Boyles, ABR-201008095, Elkland Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 12, 2010.

95. Chesapeake Appalachia, LLC, Pad ID: Donna, ABR-201008096, Terry Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2010.

96. Carrizo Marcellus, LLC, Pad ID: Shields Well Pad, ABR-201008097, Monroe Township, Wyoming County, PA; Consumptive Use of up to 1.400 mgd; Approval Date: August 13, 2010.

97. EOG Resources, Inc., Pad ID: Gross 1H Pad, ABR-201008098, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 13, 2010.

98. Chesapeake Appalachia, LLC, Pad ID: Ammerman, ABR-201008099, Litchfield Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2010.

99. EOG Resources, Inc., Pad ID: JOHNSON Pad, ABR-201008100, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 13, 2010.

100. Chesapeake Appalachia, LLC, Pad ID: George, ABR-201008101, Windham Township, Wyoming County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 13, 2010.

101. Williams Production Appalachia, LLC, Pad ID: S. Farver 1V, ABR-201008102, Benton Township, Columbia County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 13, 2010.

102. EOG Resources, Inc., Pad ID: CASEMAN 1H, ABR-201008103, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 13, 2010.

103. EOG Resources, Inc., Pad ID: CASEMAN 2H, ABR-201008104, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 13, 2010.

104. EOG Resources, Inc., Pad ID: Lee 4H, ABR-201008105, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 16, 2010.

105. EOG Resources, Inc., Pad ID: Kingsley 7V Pad, ABR-201008106, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 16, 2010.

106. Chesapeake Appalachia, LLC, Pad ID: Dave, ABR-201008107, Albany Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 16, 2010.

107. Cabot Oil & Gas Corporation, Pad ID: Ramey P1, ABR-201008108, Dimock Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: August 16, 2010.

108. EOG Resources, Inc., Pad ID: GEROULD Pad, ABR-201008109, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 16, 2010.

109. Talisman Energy USA, Inc., Pad ID: 05 027 Nekoranik, ABR-201008110, Pike Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 16, 2010.

110. Talisman Energy USA, Inc., Pad ID: 05 039 Powell Trust, ABR-201008111, Warren Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 16, 2010.

111. Energy Corporation of America, Pad ID: Whitetail #1-5MH, ABR-201008112, Goshen Township and Girard Township, Clearfield County, PA; Consumptive Use of up to 1.980 mgd; Approval Date: August 16, 2010.

112. Talisman Energy USA, Inc., Pad ID: 05 045 Mountain Paradise Club LLC, ABR-201008113, Warren Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 16, 2010.

113. Cabot Oil & Gas Corporation, Pad ID: Maiolini P2, ABR-201008114, Auburn Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: August 16, 2010.

114. Anadarko E&P Company, LP, Pad ID: Nevin L. Smith Pad A, ABR-201008115, Gamble Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 16, 2010.

115. Anadarko E&P Company, LP, Pad ID: Michael R. Fulkerson Pad A, ABR-201008116, Cogan House Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 16, 2010.

116. East Resources Management, LLC, Pad ID: Old Possessions Hunting Club 485, ABR-201008117, Sullivan Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 17, 2010.

117. EOG Resources, Inc., Pad ID: WENGER Pad, ABR-201008118, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 16, 2010.

118. EOG Resources, Inc., Pad ID: MICCIO 1H Pad, ABR-201008119, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 17, 2010.

119. EOG Resources, Inc., Pad ID: MacBride Pad, ABR-201008120, Smithfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 17, 2010.

120. Talisman Energy USA, Inc., Pad ID: 05 016 Warner, ABR-201008121, Stevens Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2010.

121. Talisman Energy USA, Inc., Pad ID: 05 044 O'Gorman, ABR-201008122, Warren Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2010.

122. Cabot Oil & Gas Corporation, Pad ID: WarrinerR P4, ABR-201008123, Dimock Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: August 17, 2010.

123. Talisman Energy USA, Inc., Pad ID: 05 046 O'Rourke, ABR-201008124, Warren Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 17, 2010.

124. EOG Resources, Inc., Pad ID: Chapman Pad, ABR-201008125, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 17, 2010.

125. East Resources Management, LLC, Pad ID: Apold 493, ABR-201008126, Sullivan Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 18, 2010.

126. EOG Resources, Inc., Pad ID: WATSON Pad, ABR-201008127, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 18, 2010.

127. Talisman Energy USA, Inc., Pad ID: 01 086 Brelsford, ABR-201008128, Armenia Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 18, 2010.

128. Talisman Energy USA, Inc., Pad ID: 05 005 Ayers, ABR-201008129, Orwell Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 18, 2010.

129. EQT Production Company, Pad ID: Phoenix E, ABR-201008130, Duncan Township, Tioga County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 18, 2010.

130. Hess Corporation, Pad ID: Kraft, ABR-201008131, Starrucca Borough, Wayne County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 19, 2010.

131. Hess Corporation, Pad ID: Steinberg 1H, ABR-201008132, Preston Township, Wayne County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 19, 2010.

132. Hess Corporation, Pad ID: Gerhard, ABR-201008133, Scott Township, Wayne County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 19, 2010.

133. Cabot Oil & Gas Corporation, Pad ID: StockholmK P2, ABR-201008134, Rush Township, Susquehanna County, PA; Consumptive Use of up to 3.575 mgd; Approval Date: August 19, 2010.

134. East Resources Management, LLC, Pad ID: Kinnan 845, ABR-201008135, Middlebury Township, Tioga County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 19, 2010.

135. Ultra Resources, Inc., Pad ID: Ritter 828, ABR-201008136, Gaines Township, Tioga County, PA; Consumptive Use of up to 4.990 mgd; Approval Date: August 19, 2010.

136. Carrizo Marcellus, LLC, Pad ID: Baker 2H, ABR-201008137 Forest Lake Township, Susquehanna County, PA; Consumptive Use of up to 1.400 mgd; Approval Date: August 20, 2010.

137. Citrus Energy, Pad ID: Mirabelli Pad 1-1H, ABR-201008138, Washington Township, Wyoming County, PA; Consumptive Use of up to 5.000 mgd; Approval Date: August 20, 2010.

138. Chesapeake Appalachia, LLC, Pad ID: Bedford, ABR-201008139 Elkland Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 20, 2010.

139. Chesapeake Appalachia, LLC, Pad ID: Thall, ABR-201008140, Albany Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 20, 2010.

140. Talisman Energy USA, Inc., Pad ID: Carpenter 03 023, ABR-201008141, Columbia Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 20, 2010.

141. Seneca Resources Corporation, Pad ID: DCNR Tract 001 1H, ABR-201008142, Sweden Township, Potter County, PA; Consumptive Use of up to 4.000 mgd; Approval Date: August 23, 2010, including a partial waiver of 18 CFR 806.15.

142. Anadarko E&P Company, LP, Pad ID: Scott E. Ely Pad A, ABR-201008143, Gamble Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 23, 2010.

143. Anadarko E&P Company, LP, Pad ID: Frank L. Hartley Pad A, ABR-201008144, Cogan House Township, Lycoming County, PA; Consumptive Use of up to 3.000 mgd; Approval Date: August 23, 2010.

144. Chesapeake Appalachia, LLC, Pad ID: Clarke, ABR-201008145, Overton Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

145. Chesapeake Appalachia, LLC, Pad ID: Benspond, ABR-201008146, Elkland Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

146. Chesapeake Appalachia, LLC, Pad ID: Fremar, ABR-201008147, Fox Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

147. Chesapeake Appalachia, LLC, Pad ID: Hotenstein, ABR-201008148, Forks Township, Sullivan County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

148. Chesapeake Appalachia, LLC, Pad ID: Balent NEW, ABR-201008149, Wysox Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 23, 2010.

149. Talisman Energy USA, Inc., Pad ID: 01 084 O'Reilly, ABR-201008150, Granville Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 25, 2010.

150. Talisman Energy USA, Inc., Pad ID: 05 067 Green Newland, LLC, ABR-201008151, Warren Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 25, 2010.

151. Talisman Energy USA, Inc., Pad ID: 05 026 Strope, ABR-201008152, Warren Township, Bradford County, PA; Consumptive Use of up to 6.000 mgd; Approval Date: August 26, 2010.

152. EOG Resources, Inc., Pad ID: TYLER Pad, ABR-201008153, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 26, 2010.

153. EOG Resources, Inc., Pad ID: W TYLER Pad, ABR-201008154, Springfield Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 26, 2010.

154. EOG Resources, Inc., Pad ID: STURDEVANT 1H Pad, ABR-201008155, Ridgebury Township, Bradford County, PA; Consumptive Use of up to 4.999 mgd; Approval Date: August 26, 2010.

155. Citrus Energy, Pad ID: P&G Warehouse 1-1H, ABR-201008156, Meshoppen Township, Wyoming County, PA; Consumptive Use of up to 5.000 mgd; Approval Date: August 26, 2010.

156. Chesapeake Appalachia, LLC, Pad ID: McCabe, ABR-201008157, Towanda Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 26, 2010.

157. Chesapeake Appalachia, LLC, Pad ID: Wolf, ABR-201008158, Athens Township, Bradford County, PA; Consumptive Use of up to 7.500 mgd; Approval Date: August 26, 2010.

Authority: Pub. L. No. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806—808.

Dated: September 24, 2010.

PAUL O. SWARTZ,
Executive Director

[Pa.B. Doc. No. 10-1958. Filed for public inspection October 8, 2010, 9:00 a.m.]

