

PROPOSED RULEMAKING

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b] Schedule of Civil Penalties

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to adopt Chapter 43b (relating to Commissioner of Professional and Occupational Affairs) to read as set forth in Annex A.

Section 5(a) of the act of June 2, 1993 (P. L. 345, No. 48) (act) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau, to adopt a schedule of civil penalties for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating a licensing board or Commission act or regulation relating to the conduct or operation of a business or facility licensed by a licensing board or commission.

Section 5(a) of the act further requires the Commissioner to publish in the *Pennsylvania Bulletin* the schedule of penalties, guidelines for imposition and procedures for appeal of the imposition of civil penalties. Accordingly, the Commissioner published a statement of policy pertaining to the schedule of civil penalties at 25 Pa.B. 4527 (October 21, 1995).

Section 5(a) of the act also requires the Commissioner, by October 21, 1997, to promulgate regulations finalizing a schedule of civil penalties, guidelines and procedures. The Commissioner intends to accomplish this mandate by promulgating the regulations in Annex A.

Prior to adopting the statement of policy, the Commissioner consulted with the applicable licensing boards, notified the various professional associations and invited comments and suggestions regarding its implementation. In addition, under the Governor's Executive Order 1996-1, the Commissioner notified the individuals and associations identified by the licensing boards and commissions of the Bureau's intent to promulgate proposed regulations and offered them the opportunity to comment on this proposal. The boards and commission considered these comments in developing the proposed schedules.

Since its implementation, civil penalty citations have been issued in approximately 373 cases. The sanctions imposed on these relatively minor violations were entered more quickly than it would have taken to resolve the same number of cases under regular disciplinary procedures.

Based upon the effectiveness of the implementation of the statement of policy, the Commissioner proposes these regulatory amendments finalizing the schedule of civil penalties, guidelines and procedures.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commissioner submitted a copy of these proposed regulations on May 23, 1997, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to

submitting the proposed regulations, the Commissioner has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Commissioner in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Commissioner within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commissioner, the General Assembly and the Governor of objections raised.

Fiscal Impact

Professional licensing statutes require each board and commission to be self-supporting. Revenues must be generated by fees paid by licensees and must meet or exceed budgeted expenditures.

A board's disciplinary duties consist of investigating complaints, inspecting licensed facilities and meting out appropriate sanctions. Although the boards are not supported by General Fund tax revenues, members of the regulated community are assessed a biennial renewal fee which finances a board's operations, including the disciplinary function.

Licensees are impacted individually when they are found guilty of violating a board's act or regulations and a fine is levied. Licensees who dispute charges brought against them, including those filed as civil penalty citations under the act, may request a hearing before a hearing examiner or appeal a decision to the appropriate board. The more resources and time expended by personnel of the Department to dispose of disciplinary cases, the greater the impact of the disciplinary function upon a board's operating costs.

Paperwork Requirements

The proposed regulations will not necessitate any legal, accounting, reporting or other paperwork requirements.

Statutory Authority

The regulations are proposed under the authority of section 5(a) of the act which gives the Commissioner the authority to adopt a schedule of civil penalties for: (1) operating without a current and valid license, registration, certification or permit; and (2) violating a licensing board or commission act or regulation relating to the conduct or operation of a business or facility licensed by a licensing board or commission.

Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Commissioner Dorothy Childress, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following the publication of the proposed regulations in the *Pennsylvania Bulletin*.

DOROTHY CHILDRESS,
Commissioner

Fiscal Note: 16-15. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

§§ 43a.1—43a.11. (Reserved).

(Editor’s Note: These proposed regulations replace the Statement of Policy published at 49 Pa. Code Chapter 43a, pages 43a-1—43a-16 (serial page nos. (201947)—(214490)).

**CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL**

§ 43b.1. Purpose.

The purpose of this chapter is to adopt a schedule of civil penalties, procedures for their imposition and procedures for appeal for persons operating without a current, registered, unsuspended and unrevoked license, registration, certificate or permit. The schedule of civil penalties also includes penalties imposed for violating provisions of statutes and regulations of the licensing boards and relating to the conduct or operation of a business or facility as licensed by a licensing board in the Bureau.

§ 43b.2. Definitions.

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

Act—The act of July 2, 1993 (P. L. 345, No. 48) (63 P. S. §§ 2201—2207).

Authorized agent—An individual authorized by the Bureau to issue citations in accordance with the act.

Bureau—The Bureau of Professional and Occupational Affairs under the Commissioner within the Department of State.

Commissioner—The Commissioner of Professional and Occupational Affairs.

§ 43b.3. Procedures.

(a) *Inspections/investigations.* Authorized agents may conduct inspections and investigations for the purpose of ascertaining compliance with statutory provisions and regulations of licensing boards and commissions relating to required licensure and the conduct or operation of a business or facility.

(b) *Citations.*

(1) If an inspection reveals a violation of a statute or a regulation for which a civil penalty has been established under the following schedule, the authorized agent may prepare a citation indicating the violations found and the penalties imposed. A copy of the citation will be provided to the respondent.

(2) The citation shall be made on a form approved by the Bureau.

(3) Within 10 days of the date of the issuance of the citation, the respondent shall enter one of the following:

(i) A plea to admit to the violation and remit payment of the civil penalty to the Bureau.

(ii) A plea to deny the violation and request a hearing to contest the imposition of a civil penalty.

(4) Failure to respond to the citation in the manner specified in paragraph (3) within 10 days will result in the entry of a default judgment against the respondent for the full amount of the civil penalty and may result in additional disciplinary action.

(5) The civil penalties shall be paid by certified check or cashier’s check or money order and made payable to the “Commonwealth of Pennsylvania,” and mailed to: Commonwealth of Pennsylvania, Department of State, Complaints Office—Citations, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649.

(c) *Hearings.*

(1) Hearings shall be conducted by a hearing examiner in compliance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

(2) If a violation is found, the hearing examiner shall impose the full amount of the civil penalty as charged in the citation and as authorized by the schedules in this chapter.

(d) *Appeals.* A decision by a hearing examiner may be appealed by any party by filing an application for review with the appropriate licensing board within 20 days of the mailing date of the order. An application for review shall set forth with specificity the grounds for appeal. The board will review the record established before the hearing examiner and in its discretion receive additional evidence.

(e) *Miscellaneous.* This section supplements 1 Pa. Code Part II (relating to general rules of administrative practice and procedures.)

§ 43b.4. Schedule of civil penalties—barbers and barber shops.

STATE BOARD OF BARBER EXAMINERS

Violation Under 63 P. S.	Title/Description	Civil Penalty
Section 551	Practicing without a license	1st offense—\$250 2nd offense—Formal action
Section 557	Availability of current license on premises	1st offense—\$50 2nd offense—\$250
Section 558	Practicing on lapsed or expired license	1st offense—Up to 90 days—Warning; 90 days or more—\$100 2nd offense—Formal action

Violation Under 63 P. S.	Title/Description	Civil Penalty
Section 558	Operating a business or facility on a lapsed or expired permit or license	1st offense—Up to 90 days—Warning; 90 days or more—\$250 2nd offense—Formal action
Section 559	Failure to employ licensed persons	1st offense—\$250 for each individual unlicensed barber 2nd offense—Formal action
Section 560	Opening shop for business before shop inspected and approved	1st offense—\$100 2nd offense—Formal action
Section 560	Failure to file application when taking over as owner of existing shop	1st offense—\$100 2nd offense—Formal action
Section 562	Operating an establishment without supervision of manager barber	1st offense—\$100 2nd offense—Formal action
Section 563	Operating a business or facility without a permit or license	1st offense—\$250 2nd offense—Formal action
Section 563(a)	Licensee practicing in place other than licensed shop	1st offense—\$150 2nd offense—Formal action

Violation Under 49 Pa. Code Chapter 3

Title/Description	Civil Penalty
Section 3.51(a) Failure to obtain new shop license when shop moves	1st offense—\$100 2nd offense—\$250
Section 3.51(b) Failure to register tradename	1st offense—\$50 2nd offense—Formal action
Section 3.54 Failure to meet minimum equipment requirements	1st offense—\$50 2nd offense—Formal action
Section 3.55 Failure to meet minimum maintenance requirements	1st offense—\$50 2nd offense—Formal action
Section 3.85 School equipment does not meet requirements	1st offense—\$50 2nd offense—\$250
Section 3.86 School maintenance and sterilization requirements not met	1st offense—\$50 2nd offense—\$100 per requirement
Section 3.89 School advertising requirements not met	1st offense—\$50 2nd offense—\$250

§ 43b.5. Schedule of civil penalties—cosmetologists, manicurists, cosmeticians, shops.

STATE BOARD OF COSMETOLOGY

Violation Under 63 P. S.

Title/Description	Civil Penalty
Section 508 Practicing without a license	1st offense—\$500 2nd offense—Formal action
Section 508 Maintaining an unlicensed shop	1st offense—\$500 2nd offense—Formal action
Section 514 Practice in place other than licensed shop	1st offense—\$500 2nd offense—Formal action
Section 519(a) Owner employing unlicensed employes	1st offense—\$500 for each unlicensed individual 2nd offense—Formal action
Section 524 Availability of current licenses and permits on the premises	1st offense—\$100 2nd offense—\$250

Violation Under 49 Pa. Code Chapter 7

Title/Description	Civil Penalty
Section 7.43 Practice on lapsed license	1st offense—Up to 90 days—Warning; 90 days or more—\$250 2nd offense—Formal action

**Violation Under
49 Pa. Code
Chapter 7**

	Title/Description	Civil Penalty
Section 7.62	Operating without manager	1st offense—\$100 2nd offense—\$250
Sections 7.64(a)	Manager employing unlicensed persons	1st offense—\$500 for each unlicensed individual 2nd offense—Formal action
Sections 7.71—7.79	Physical requirements for beauty shop	1st offense—\$50 for each violation 2nd offense—\$100 for each violation
Section 7.82	Failure to maintain record of services rendered outside a shop	1st offense—\$50 2nd offense—\$250
Section 7.92	Failure to sterilize equipment	1st offense—\$100 2nd offense—\$250
Section 7.93	Unsanitary use of towels	1st offense—\$100 2nd offense—\$250
Section 7.94	Unsanitary use of supplies	1st offense—\$100 2nd offense—\$250
Section 7.101	Electrical appliances not properly installed/grounded	1st offense—\$50 2nd offense—\$250
Section 7.114	School equipment and supplies not sufficient for student enrollment	\$50/each item missing
Section 7.117	Failure to employ supervisor	1st offense—\$500 2nd offense—Formal action
Section 7.118(a)	Unlicensed teachers	1st offense—\$500 2nd offense—Formal action
Section 7.118(b)	Availability of instructor license on the premises	1st offense—\$100 2nd offense—\$250
Section 7.118(c)	Failure to employ at least one full time instructor	1st offense—\$100 2nd offense—\$250
Section 7.118(d)	Allowing student-teacher ratio to exceed 25:1	1st offense—\$100 2nd offense—\$250
Section 7.119	Failure to maintain student records	1st offense—\$250 2nd offense—Formal action
Section 7.119a	Failure to obtain notarized transcript; failure to obtain verification from other state	1st offense—\$50 2nd offense—\$250
Section 7.120	Work done by students on public; failure to post notices; failure to post sign	1st offense—\$100 2nd offense—\$250
Section 7.121	Failure to advertise licensee name or student work	1st offense—\$100 2nd offense—\$250
Section 7.134	Apprentice reports—failure to submit to board	1st offense—\$100 2nd offense—\$250

§ 43b.6. Schedule of civil penalties—funeral directors and funeral establishments.

STATE BOARD OF FUNERAL DIRECTORS

**Violation Under
63 P. S.**

	Title/Description	Civil Penalty
Section 479.6	Failure to display licenses conspicuously	1st offense—\$50 2nd offense—\$250
Section 479.13	Practice without license	Any offense—\$1,000

**Violation Under
49 Pa. Code
Chapter 13**

	Title/Description	Civil Penalty
Section 13.83 Section 13.84 Section 13.194	Requirements for advertising of name of licensee	1st offense—\$100 2nd offense—\$250
Section 13.91	Operating funeral establishment without Board approval	Any offense—\$1,000

**Violation Under
49 Pa. Code
Chapter 13**

	Title/Description	Civil Penalty
Section 13.171	Use of preparation room for purposes other than embalming or caring for remains	1st offense—\$100 2nd offense—Formal action
Section 13.174	Preparation room facility and equipment requirements	1st offense—\$100 per violation 2nd offense—\$250 per violation
Section 13.182	Improper disposal of waste products including biohazardous waste	1st offense—\$100 2nd offense—\$500
Section 13.193	Advertising name of permanent supervisor	1st offense—\$100 2nd offense—\$250
Section 13.224	Failure to comply with reporting requirements for prepaid burial contracts	1st offense—\$100 2nd offense—Formal action
Section 13.225	Failure to file affidavit for prepaid burial account	1st offense—\$100 2nd offense—Formal action
Section 13.231	Practicing on a lapsed license	Up to 60 days—1st offense—Warning 60 days or more—\$500 2nd offense—Formal action

§43b.7. Schedule of civil penalties—pharmacists and pharmacies.

STATE BOARD OF PHARMACY

**Violation Under
49 Pa. Code
Chapter 27**

	Title/Description	Civil Penalty
Section 27.11	Pharmacy Permit— (a) Lack of permit showing accurate and current information as to name and address of pharmacy and name of pharmacist manager (b) Display, advertise or use a name other than registered name (g) Failure to notify Board of change in pharmacist manager or operation of pharmacy without pharmacist manager.	\$100 1st offense—\$100 2nd offense—\$100 1st offense—\$50 per month or part of month; Formal action if no compliance within 60 days after receiving citation 2nd offense—same as 1st offense
Section 27.14	Supplies— (b) Expired drugs (c) Failure to maintain equipment and miscellaneous supplies	1st offense—Under 1 year old—\$250 1st offense—Over 1 year old—\$500 2nd offense—\$1,000 \$100 each
Section 27.15	Sanitary standards— (a) and (b) Uncleanliness (c) Pharmacy not in good repair (d) Waste disposal violations (e) Prescription area not dry, well ventilated and well lighted; not free from rodents or insects (f) Plumbing not functional (g) Unauthorized items in prescription area	\$250 \$250 \$250 \$250 \$250 \$250
Section 27.16	Construction requirements— (b)(5) Lack of telephone (6) Lack of required sanitary facilities (8) Television set in prescription area not intended for pharmacy instructional use (9) Drugs accessible to unauthorized persons; animals unrelated to pharmacy security in prescription area	\$250 \$250 \$500 \$250
Section 27.18	Standards of practice— (a) Unsuitable containers (b) Lack of required information on prescriptions	\$100 \$100

**Violation Under
49 Pa. Code
Chapter 27**

	Title/Description	Civil Penalty
	(d) Lack of required information on container labels	\$100

**Violation Under
28 Pa. Code
Chapter 25**

	Title/Description	Civil Penalty
Section 25.55(d)	Improper generic substitution	
	Five to nine	\$250
	10 or more	\$500
Section 25.55(e)	Failure to refill prescription with the identical product without authorization from prescriber and patient	\$100
Section 25.56(a)	Improper filing of Schedule II prescriptions	\$100
Section 25.56(b)	Improper filing of Schedule III, IV, V prescriptions	\$100
Section 25.63(b)	Inadequate security for controlled substances	\$250
Section 25.92	Lack of lot numbers required on stock items	\$100
Section 25.94	Lack of expiration date on label of dispensed drugs of less than 1 year's potency.	\$100

§ 43b.10. Schedule of civil penalties—real estate and cemetery brokers, real estate schools.

STATE REAL ESTATE COMMISSION

**Violation Under
63 P. S.**

	Title/Description	Civil Penalty
Section 455.301	Acting in capacity of cemetery broker or cemetery salesperson without a license	1st offense—\$250
Section 455.601(a)	Failure of licensee to notify Commission of change of location of office of broker or cemetery broker within 10 days	1st offense—\$125 2nd offense—\$250
Section 455.601(a)	Failure of broker or cemetery broker to maintain sign with licensed name outside office	1st offense—\$250 2nd offense—\$500
Section 455.603	Failure of licensee to notify Commission of change of employing broker within 10 days	1st offense—\$125 2nd offense—\$250
Section 455.604(a)(4)	Use of any trade name or insignia or membership in any real estate association or organization of which the licensee is not a member	1st offense—\$250 2nd offense—\$500
Section 455.604(a)(8)	Placing a "for sale" or "for rent" sign or advertising property without the written consent of the owner	1st offense—\$100 2nd offense—\$250
Section 455.604(a)(16)	Failure to exercise adequate supervision of licensed salesperson or associate broker (when subordinate violates § 455.601(a), 455.603 or 455.604(a)(21))	Same as penalty for underlying offense by subordinate
Section 455.604(a)(21)	Failure of licensee to have current license when performing licensed activity	1st offense—\$250
Section 455.604(a)(26)	Failure to include right-of-cancellation information in a time share or campground membership	1st offense—\$500 2nd offense—\$1,000
Section 2205(b)(2)	Aiding and abetting cemetery sales activities by unlicensed individuals	1st offense—\$250 per individual

**Violation under
49 Pa. Code
Chapter 35**

	Title/Description	Civil Penalty
Section 35.242(a)	Failure of broker or cemetery broker to devote office to transaction of real estate business in privacy	1st offense—\$100
Section 35.242(b)	Failure of broker or cemetery broker to maintain separate entrance to office located in private residence	1st offense—\$50 2nd offense—\$100
Section 35.242(c)	Failure of broker or cemetery broker to display business name prominently and in permanent fashion outside office	1st offense—\$250 2nd offense—\$500
Section 35.243(a)	Failure of broker or cemetery broker to obtain license before opening branch office	1st offense—\$250 2nd offense—\$500

**Violation under
49 Pa. Code
Chapter 35**

	Title/Description	Civil Penalty
Section 35.245(a)	Failure of broker, cemetery broker or rental listing referral agent to conspicuously display current license at main office	1st offense—\$100 2nd offense—\$250
Section 35.245(b)	Failure of associate broker, salesperson, associate cemetery broker or cemetery salesperson to conspicuously display current license at office out of which licensee works	1st offense—\$100 2nd offense—\$250
Section 35.245(c)	Failure of broker or cemetery broker to conspicuously display current branch office license at branch office	1st offense—\$100 2nd offense—\$250
Section 35.245(d)	Failure of broker or cemetery broker to maintain at main office list of licensed employees and branch offices at which employees work	1st offense—\$100 2nd offense—\$250
Section 35.285	Failure to provide Commission or its representative with information regarding a franchisor, network or other parent real estate company with which the licensee is or may become affiliated	1st offense—\$250 2nd offense—\$500
Section 35.286(b)	Failure of a licensed entity other than an individual to produce its corporate, partnership or association records for examination by the Commission or its authorized representative	1st offense—\$250 2nd offense—\$500
Section 35.290(b)	Failure of a licensee to notify the Commission of disciplinary action taken against the licensee by the real estate licensing authority of another jurisdiction within 30 days of receiving notice of the disciplinary action	1st offense—\$500 2nd offense—\$1,000
Section 35.301(a)	Advertising the sale or lease of real estate without the authority of the seller or lessor or its agent	1st offense—\$250 2nd offense—\$500
Section 35.301(b)	Publishing information about a rental property if the lessor or property manager expressly stated that the property was not to be included in lists prepared by rental listing referral agents	1st offense—\$250 2nd offense—\$500
Section 35.304	Failure of a broker who sells or leases his own real estate to disclose in ads for the property that he is a real estate broker	1st offense—\$250 2nd offense—\$500
Section 35.305(a)	Failure of broker, cemetery broker or rental listing referral agent to advertise or hold himself out to public under business name designated on license	1st offense—\$250 2nd offense—\$500
Section 35.305(b)	Failure of associate broker, salesperson, associate cemetery broker or cemetery salesperson to include employing broker's name and telephone number on advertisement	1st offense—\$500 2nd offense—\$750
Section 35.361(a)	Failure of real estate school to prominently display certificate of approval at main location and copy at each satellite location	1st offense—\$100 2nd offense—\$250
Section 35.361(b)	Failure of real estate school to prominently display school's approved name outside each school location	1st offense—\$250 2nd offense—\$500
Section 35.361(c)	Failure of real estate school to prominently display school director's letter of approval at main location and copy at each satellite location	1st offense—\$100 2nd offense—\$250
Section 35.361(d)	Failure of real estate school to prominently display alphabetical list of courses and instructors at each school location	1st offense—\$100 2nd offense—\$250
Section 35.361(e)	Failure of real estate school to prominently display a list of satellite locations at main location	1st offense—\$100 2nd offense—\$250

§ 43b.9. Schedule of civil penalties—vehicle manufacturers, dealers and salespersons.

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

Violation**Under****63 P. S. §818**

	Title/Description	Civil Penalty
Section 818.5(a)	Individual working as unlicensed salesperson for dealership	1st offense—\$100 2nd offense—\$500 3rd offense—Formal action
Section 818.5(d)	Failure to display license in principal office	1st offense—\$100 2nd offense—\$500 3rd offense—Formal action
Section 818.5(h)	Vehicle auction not posting list of revoked/suspended licensees	1st offense—\$250 2nd offense—\$500 3rd offense—Formal action
Section 818.19(15)	Licensed dealer employing unlicensed salesperson	1st offense—\$500 2nd offense—\$1,000 3rd offense—Formal action
Sections 818.5(a) and 818.19(27)	Licensed dealer operating an unlicensed branch lot	1st offense—\$1,000 2nd offense—Formal action
Section 818.19(34)	Licensed dealer conducting its business under any name other than its licensed name	1st offense—\$250 2nd offense—\$500 3rd offense—Formal action
Section 818.19(37)	Licensed dealer failing to produce records to an authorized agent of the Board	1st offense—\$500 2nd offense—\$1,000 3rd offense—Formal action

Violation under**49 Pa. Code****Chapter 19**

	Title/Description	Civil Penalty
Section 19.17	Broker or dealer business identity combined with other businesses	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(1)	Dealer does not have permanent enclosed building	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(2)	Dealership does not have private office	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(i)	Dealer display area for five vehicles or 5,000 square feet	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(ii)	Display lot not graded and surfaced with required material	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(iii)	Display area separated from adjacent parking area	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(iv)	Display area lighted if open evenings	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(5)	Dealer fails to maintain separate telephone line	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(6)	Business sign not permanent or visible to the public	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(7)	Dealership in violation of land use ordinances	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(9)	Failure to post business hours	1st offense—\$100 2nd offense—\$500

[Pa.B. Doc. No. 97-905. Filed for public inspection June 6, 1997, 9:00 a.m.]

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Proposed Amendments to the Delaware River Basin Commission's Groundwater Protected Area Regulations for Southeastern Pennsylvania

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to its Groundwater Protected Area Regulations for Southeastern Pennsylvania with respect to the establishment of numerical groundwater withdrawal limits for subbasins in the protected area. The proposed limits, based upon hydrologic budget analyses, would initially be specified for the 14 subbasins in the Neshaminy Creek Basin. Limits for the remaining 52 subbasins within the protected area would be developed upon completion of additional hydrologic budget analyses, scheduled to be completed late in 1997.

Dates

The public hearing will be held on Tuesday, June 24, 1997, beginning at 3 p.m. and continuing until 5 p.m., as long as there are people present wishing to testify. The hearing will resume at 7 p.m. and continue until 9 p.m., as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be announced at the hearing. Persons wishing to testify at the hearing are requested to register with the Secretary in advance of the hearing.

Addresses

Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. The public hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive in West Trenton, New Jersey.

For Further Information Contact

Copies of the Commission's Groundwater Protected Area Regulations for Southeastern Pennsylvania may be obtained by contacting Susan M. Weisman, Commission Secretary, at (609) 883-9500 ext. 203.

Supplemental Information

Background and Rationale

The Commission's Groundwater Protected Area Regulations for Southeastern Pennsylvania were adopted in 1980 to prevent depletion of groundwater, protect the interests and rights of lawful users of the same water source, and balance and reconcile alternative and conflicting uses of limited water resources in the area. Lowered water tables resulting from withdrawals in excess of recharge rates have led to reduction of flows in some perennial streams in the region and have dried up some stream reaches which previously flowed all year. Such reductions in base flow interfere with instream and downstream water uses, adversely affect fisheries and aquatic life and threaten to reduce the capacity of streams in the region to assimilate pollutants.

Since then, the groundwater protected area regulations have been implemented and all interference issues have been addressed, with many sources limited to more reliable quantities. In addition, other alternative supplies have been made available in much of the protected area.

While it is clear that groundwater withdrawals have impacted the low flow of perennial streams, it has been difficult to address the impact on streamflow on a project by project basis. With this in mind, the Commission and its Groundwater Advisory Committee evaluated a variety of approaches and determined that additional information was needed. In 1996, the United States Geological Survey completed work on a computer program to more accurately compare water withdrawals and groundwater base flow in the Neshaminy Creek Basin. Over the past year, the Commission's Groundwater Advisory Committee met on several occasions to review the study products and discuss possible management strategies to address the problems identified by the study. Commission staff has presented the study results and options to some 15 county planning entities, State and Federal agencies and watershed, civic and professional organizations. Finally, the Commission held public briefings on the proposed amendments to the regulations on April 8, 1997, in Doylestown, Pennsylvania and on April 10, 1997, in West Chester, Pennsylvania.

The proposed amendments to the Groundwater Protected Area Regulations would establish a two-tiered system of withdrawal limits. The first tier would serve as a warning that a subbasin is "potentially stressed." In potentially stressed subbasins, applicants for new or expanded groundwater withdrawals would be required to implement one or more programs to mitigate adverse impacts of additional groundwater withdrawals. Acceptable programs would include: conjunctive use of groundwater and surface water; expanded water conservation; programs to control groundwater infiltration; and artificial recharge and spray irrigation. The second tier would serve as the maximum withdrawal limit. The Commission would seek to prevent groundwater withdrawals from exceeding the maximum withdrawal limit.

The proposed regulations would also provide incentives for holders of existing DRBC docket and protected area permits to implement the above-cited conjunctive use and conservation programs to mitigate the adverse impacts of their groundwater withdrawals. If docket or permit holders successfully implement one or both programs, the Commission would extend the docket or permit duration for up to 10 years.

The proposed regulations would also specify administrative criteria for issuing and review of dockets and permits as well as protocol for updating and revising withdrawal limits to provide additional protection for streams designated by the Commonwealth as "high quality" or "exceptional value," or to correspond with any integrated resources plans adopted by municipalities for subbasins.

The groundwater study which provided the basis for the proposed withdrawal limits for the 14 subbasins in the Neshaminy Creek Basin was prepared by the United States Geological Survey in cooperation with the Commission and is entitled "Water-Use Analysis Program for the Neshaminy Creek Basin, Bucks and Montgomery Counties, Pennsylvania." Limited quantities of this report and its accompanying map series entitled "Maps of Difference Between Groundwater Contributions to Base Flow for the Various Recurrence Intervals and Groundwater Withdrawals in the Neshaminy Creek Basin, Pennsylvania" were printed and may be reviewed at the Commission's

offices at 25 State Police Drive, West Trenton, New Jersey. Contact Judith L. Strong, Commission Librarian at (609) 883-9500 ext. 263 to make an appointment. Review copies are also available at the offices of the Bucks County Planning Commission (215) 345-3400; Bucks County Library Center (215) 348-9082; Montgomery County Planning Commission (Drew Shaw) (610) 278-3733; the Chester County Library (Sue Wilson) (610) 363-0884; and Lehigh Valley Planning Commission (610) 264-4544.

The subject of the hearing will be as follows:

Amendment to the Commission's Groundwater Protected Area Regulations for Southeastern Pennsylvania Relating to the Establishment of Numerical Groundwater Withdrawal Limits for Subbasins in the Protected Area.

It is proposed to:

1. Amend the Groundwater Protected Area Regulations for Southeastern Pennsylvania as follows: Section 6 is hereby modified by the addition of new subsections h. through m., to read as follows:

h. Dockets and protected area permits may be issued for a duration of up to 10 years and shall specify the maximum total withdrawals that must not be exceeded during any consecutive 30-day period. Such maximum total withdrawals shall be based on demands projected to occur during the duration of the docket or protected area permit.

i. Groundwater withdrawal limits shall be defined for subbasins in accordance with the provisions of (1) or (2). The limits for specific subbasins are set forth in (3).

(1) Hydrologic budget analyses shall be conducted for all subbasins in the Southeastern Pennsylvania Groundwater Protected Area. The analyses shall determine the 1-year-in-25 average annual baseflow rate. The 1-year-in-25 average annual baseflow rate shall serve as the maximum withdrawal limit for net annual groundwater withdrawals for subbasins. If net annual groundwater withdrawals exceed 75 percent of this rate for a subbasin, such a subbasin shall be deemed "potentially stressed." The Commission shall maintain a current list of net annual groundwater withdrawals for all subbasins. "Net" annual groundwater withdrawals include total groundwater withdrawals less total water returned to the groundwater system of the same subbasin.

(2) Upon application by the appropriate governmental body or bodies, the withdrawal limits criteria set forth in (1) may be revised by the Commission to provide additional protection for any subbasin identified in (3) with streams or stream segments designated by the Commonwealth as either "high quality" or "exceptional value" or to correspond with more stringent requirements in integrated resource plans adopted and implemented by all municipalities within a subbasin identified in (3). Integrated resource plans shall set forth the hydrologic basis for more stringent withdrawal limits and consider groundwater availability, potential impacts of withdrawals on flow frequency, and existing and future water needs in the subbasin. Integrated resource plans shall be adopted and implemented by all municipalities within a subbasin and incorporated into each municipality's Comprehensive Plan, which is required by the Pennsylvania Municipalities Planning Code.

(3) The potentially stressed levels and withdrawal limits for all delineated basins and subbasins are set forth below:

<i>Neshaminy Creek Basin</i>		
<i>Subbasin</i>	<i>Potentially Stressed (mg/y)</i>	<i>Withdrawal Limit (mg/y)</i>
West Branch Neshaminy	1054	1405
Pine Run	589	785
North Branch Neshaminy	845	1126
Main Stem Doylestown	713	950
Main Stem Warwick	927	1236
Little Neshaminy Warrington	505	673
Park Creek	584	779
Little Neshaminy Warminster	1008	1344
Mill Creek	1175	1567
Main Stem Northampton	593	791
Newtown Creek	298	397
Core Creek	497	662
Ironworks Creek	326	434
Main Stem Lower Neshaminy	2876	3835

Subject to public notice and hearing, this section may be updated or revised based upon completion of hydrologic budget analyses for the remaining 52 subbasins within the Protected Area or in accordance with (2).

j. Upon its determination that a subbasin is potentially stressed, the Commission shall notify all groundwater users in the subbasin withdrawing 10,000 gallons per day or more during any 30-day period of its determination. If any such users have not obtained a docket or protected area permit from the Commission, they shall be required to apply to the Commission within 60 days of notification.

k. In potentially stressed subbasins, dockets and protected area permit applications for new or expanded groundwater withdrawals must include one or more programs to mitigate the adverse impacts of the new or expanded groundwater withdrawal. The eligible programs are noted below. If the remainder of the application and the program(s) submitted are acceptable, the withdrawal may be approved by the Commission for an initial 3-year period. The applicant shall implement the program(s) immediately upon Commission approval. If after the 3-year period the program(s) is deemed successful by the Commission, the docket or permit duration may be extended for up to 10 years. The project sponsor shall be required to continue the program(s) for the duration of the docket or permit.

(1) A conjunctive use program that demonstrates the applicant's capability to obtain at least 15 percent of its average annual system usage from a reliable surface water supply. An acceptable program shall include either reservoir storage or an interconnection with a surface water supplier and an agreement or contract to purchase water from the supplier for the duration of the docket or permit.

(2) A water conservation program that exceeds the requirements of Section 7. For existing water utilities, the program shall reduce average annual per capita water usage by at least 5%. All conservation programs shall include water conservation pricing, either inclining block rates, seasonal rates, or excess-use surcharges, and plumbing fixture rebate or retrofit components. For self-supplied users, the program shall include water efficient technologies such as recycling, reuse, xeriscaping, drip or micro irrigation, or other innovative technology approved by the Commission.

(3) A program to monitor and control groundwater infiltration to the receiving sewer system. The program must quantify groundwater infiltration to the system and

document reductions in infiltration. The program should include such measures as leakage surveys of sewer mains, metering of sewer flows in mains and interceptors, analysis of sewer system flows to quantify infiltration, and remedial measures such as repair of leaks and joints, main lining and main replacement.

(4) An artificial recharge or spray irrigation program that demonstrates a return of at least 60 percent of the total new or expanded annual withdrawal to the same groundwater basin and aquifer system from which it is withdrawn. The program shall not impair groundwater quality.

l. The durations of all existing docket and protected area permits may be extended by the Commission for an additional 5 years if the docket or permit holder successfully implements either option (k)(1) or (k)(2). If the docket or permit holder successfully implements both options, the docket or permit may be extended for an additional 10 years. The Executive Director shall notify all docket and permit holders potentially affected by this resolution of their right to file an application to determine their eligibility for extension.

m. It is the policy of the Commission to prevent, to the extent reasonably possible, net annual groundwater withdrawals from exceeding the maximum withdrawal limit. An application for a proposed new or expanded groundwater withdrawal that would result in net annual groundwater withdrawals exceeding the maximum withdrawal limit established in paragraph (i)(3) shall set forth the applicant's proposal for complying with the Commission's policy, with such supporting documentation as may be required by the Executive Director. Notification of the application shall be given to all affected existing water

users who may also submit comments or recommendations for consideration by the Commission on the pending application. In taking action upon the application, the Commission shall give consideration to the submissions from the applicant and affected water users. If the Commission determines that it is in the public interest to do so, it may reduce the total of proposed and existing groundwater withdrawals within a subbasin to a level at or below the withdrawal limit. Unless otherwise determined by the Commission, docket and permit holders shall share equitably in such reductions.

2. This regulation shall be effective immediately. Delaware River Basin Compact, 75 Stat. 688.

SUSAN M. WEISMAN,
Secretary

Fiscal Note: 68-34. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART V. DELAWARE RIVER BASIN COMMISSION
CHAPTER 901. GENERAL PROVISIONS**

§ 901.5. Groundwater protection area, southeastern Pennsylvania.

The Basin Regulations, Groundwater Protection, South-eastern Pennsylvania, as set forth at 18 CFR Part 430 [1985] 1997 are hereby incorporated by reference and made part of this title.

[Pa.B. Doc. No. 97-906. Filed for public inspection June 6, 1997, 9:00 a.m.]
