PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 129]

Equivalency Determinations and Aerospace Manufacturing and Rework—VOC Emission Limitations

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 129 (relating to definitions; and standards for sources) to read as set forth in Annex A.

The changes to Chapter 121 add definitions of terms used in the substantive sections of Chapter 129. A new § 129.73 (relating to aerospace manufacturing and rework) establishes requirements to control volatile organic compound (VOC) emissions from aerospace manufacturing and rework facilities. In addition, § 129.51 (relating to general) is being modified to remove the requirement that equivalency determinations be submitted to the Environmental Protection Agency (EPA) as a State Implementation Plan (SIP) amendment.

This notice is given under Board Order at its meeting of July 15, 1997.

A. *Effective Date*

These proposed amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663, or M. Dukes Pepper, Jr., Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. *Statutory Authority*

This action is being taken under the authority of sections 5(a)(1) and 5(a)(13) of the Air Pollution Control Act (35 P. S. §§ 4005(a)(1) and 4005(a)(13)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background of the Amendment*

Section 5(a)(13) of the Air Pollution Control Act (35 P. S. § 4005(a)(13)) specifically authorizes the Board to adopt regulations establishing alternative VOC emission limitations for aerospace coatings and solvents, including extreme performance coatings, which are required to be used by the United States Department of Defense, the United States Department of Transportation and the National Aeronautics and Space Administration or to meet military and aerospace specifications provided these alternative limitations are authorized by the Clean Air Act.

The EPA has worked with the aerospace industry to develop control techniques and guidelines related to VOC emissions from aerospace manufacturing and rework operations. These proposed amendments incorporate the substantive provisions of the draft guidelines into the Department's air quality regulations.

The Department of Environmental Protection (Department) worked with the Air Subcommittee of the Air and Water Quality Technical Advisory Committee (AWQTAC) in the development of these proposed amendments. At its April 17, 1997 meeting, the Air Subcommittee acting on behalf of AWQTAC recommended adoption of the proposed amendments.

E. *Summary of Regulatory Revisions*

The proposed changes to Chapter 121 add definitions of terms used in the substantive provisions in Chapter 129. Most of the definitions are coatings listed in Table II. The definitions include: "ablative coating," "adhesion promoter," "adhesion bonding primer," "adhesive primer," "aerosol coating," "aerospace coating operation," "aerospace coating unit," "aerospace primer," "aerospace surface preparation," "aerospace topcoat," "aerospace vehicle or component," "aircraft fluid systems," "aircraft transparency," "antichafe coating," "antique aerospace vehicle or component," "aqueous cleaning solvent," "bonding maskant," "chemical agent-resistant coating (CARC)," "chemical milling maskant," "cleaning operation," "cleaning solvent," "closed-cycle depainting system," "commercial exterior aerodynamic structure primer," "commercial interior adhesive," "compatible epoxy primer," "compatible substrate primer," "confined space," "corrosion prevention system," "critical use and line sealer maskant," "cryogenic flexible primer," "cryoprotective coating," "cyanoacrylate adhesive," "electric or radiation-effect coating," "electrostatic discharge and electromagnetic interference (EMI) coating," "elevated temperature skydrol resistant commercial primer," "epoxy polyamide topcoat," "exempt solvent," "fire-resistant (interior) coating," "flexible primer," "flight testing coating," "flush cleaning," "fuel tank adhesive," "fuel tank coating," "hand-wipe cleaning operation," "high temperature coating," "insulation covering," "intermediate release coating," "lacquer," "limited access space," "metalized epoxy coating," "mold release," "nonstructural adhesive," "operating parameter value," "optical antireflection coating," "part marking coating," "pretreatment coating," "radome," "rain erosion-resistant coating," "rocket motor bonding adhesive," "rocket motor nozzle coating," "rubber-based adhesive," "scale inhibitor," "screening print ink," "sealant," "seal coat maskant," "self-priming topcoat," "semiaqueous cleaning solvent," "silicone insulation material," "solids," "solid film lubricant," "space vehicle," "specialty coating," "specialized function coating," "spray gun," "structural autoclavable adhesive," "structural nonautoclavable adhesive," "temporary protective coating," "thermal control coating," "touch-up and repair operation," "Type I chemical etchant," "Type II chemical etchant," "VOC composite vapor pressure," "waterborne (water-reducible) coating," "wet fastener installation coating" and "wing coating".

In addition, the definition of "miscellaneous metal parts and products" is being modified to exclude aerospace vehicles or components from the miscellaneous metal parts and products category.

The changes to § 129.51(a)(6) remove the requirement that alternative compliance methods for meeting the VOC requirements contained in §§ 129.52, 129.67 and 129.73 (relating to surface coating processes; graphic arts systems; and aerospace manufacturing and rework) be submitted to the EPA as a SIP amendment. The proposal

requires the alternative compliance method to be incorporated into a plan approval and operating permit which is subject to EPA review. This will streamline the process for establishing alternative compliance methods.

A new § 129.73 establishes specific allowable VOC content requirements for aerospace coatings. The methodology for calculating the VOC content of coatings is provided in § 129.73(a)(3). Subsection (a)(4) of the proposed amendments establishes application techniques for applying aerospace coatings and subsection (a)(5) establishes exceptions to those coating technique requirements. Subsection (a)(6) establishes limitations for hand-wipe cleaning of aerospace vehicles or components and subsection (a)(7) establishes exceptions to the hand-wipe requirements. Subsection (a)(8)—(10) establishes requirements for cleaning solvent containers, spray gun cleaning and housekeeping. Subsection (a)(11) authorizes compliance through the use of approved air pollution control equipment. Finally, subsection (a)(12) establishes the recordkeeping requirements for aerospace manufacturing and rework facilities.

This regulatory revision will be submitted to the EPA as an amendment to the SIP.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

Overall, the citizens of this Commonwealth will benefit from these recommended changes because they streamline the procedures for implementing the Department's air quality program for establishing equivalencies and implement specific requirements for aerospace manufacturing and rework operations.

Compliance Costs

These proposed amendments may slightly reduce compliance costs by streamlining the equivalency process. The aerospace requirements should have no effect on compliance costs.

Compliance Assistance Plan

The Department plans to educate and assist the public and the regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing regional compliance assistance program.

Paperwork Requirements

The regulatory revisions will reduce the paperwork related to complaints and odor investigations.

G. *Sunset Review*

This proposal will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the proposed amendments effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 12, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department 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 the Department, the Governor and the General Assembly to review these objections before publication of the final-form regulations.

I. *Public Comment and Board Public Hearings*

Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on the proposed amendments. The hearings will be held at 10 a.m. on the following dates and at the following locations:

September 23, 1997	Department of Environmental Protection 1st Floor Meeting Room Rachel Carson State Office Building 400 Market Street Harrisburg, PA
September 25, 1997	Department of Environmental Protection Southwest Regional Office 500 Waterfront Drive Pittsburgh, PA
September 29, 1997	Upper Merion Township Building 175 West Valley Forge Road King of Prussia, PA

Persons wishing to present testimony at the hearings must contact Kate Coleman at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness and three written copies of the oral testimony must be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearings and require an auxiliary aid, service or other accommodations to participate, should contact Kate Coleman at (717) 787-4526 or through the Pennsylvania AT&T relay service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Written Comments

In lieu of or in addition to presenting oral testimony at the hearings, interested persons may submit written comments, suggestions or objections regarding the proposed amendments to the Board, 15th Floor Rachel Carson State Office Building, P. O. Box 8477, Harrisburg, PA 17105-8477. Comments received by facsimile will not be accepted. Comments must be received by October 29, 1997. In addition to the written comments, interested persons may also submit a summary of their comments to the Board. This summary may not exceed one page in length and must be received by October 29, 1997. The summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments

Comments may be submitted electronically to the Board at Regcomments@a1.dep.state.pa.us. A subject heading of the proposal and return name and

address must be included in each transmission. Comments submitted electronically must also be received by the Board by October 29, 1997.

JAMES M. SEIF,
Chairperson

(*Editor's Note*: Proposals to amend § 121.1 remain outstanding at 27 Pa.B. 1822, 1829, 2130 and 4340 (April 12, 1997, May 3, 1997 and August 23, 1997).

Fiscal Note: 7-326. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

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***Ablative coating*—A coating that chars when exposed to open flame or extreme temperatures, as would occur during the failure of an engine casing or during aerodynamic heating. The ablative char surface serves as an insulating barrier, protecting adjacent components from the heat or open flame.**

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***Adhesion promoter*—A very thin coating applied to an aerospace vehicle or component substrate to promote wetting and to form a chemical bond with the subsequently applied material.**

***Adhesive bonding primer*—A primer applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250° or below and primers with a design cure above 250°.**

***Adhesive primer*—A coating applied to an aerospace vehicle or component that does one of the following:**

(i) Inhibits corrosion and serves as a primer when applied to bare metal or other surfaces prior to adhesive application.

(ii) Is applied to surfaces that can be expected to contain fuel, with the exception of fuel tanks.

***Aerosol coating*—A coating expelled from a handheld, pressurized, nonrefillable container in a finely divided spray when a valve on the container is depressed.**

***Aerospace coating operation*—An operation using a spray booth, tank or other enclosure of an area, such as a hangar, for applying a single type of coating (for example, primer). Using the same spray booth for applying another type of coating (for example, topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.**

***Aerospace coating unit*—A series of one or more coating applicators and any associated drying area or oven wherein a coating is applied, dried and cured. A coating unit ends at the point where the coating is dried or cured, or prior to a subsequent application of a different coating. It is not necessary to have an associated oven or flashoff area to be included in this definition.**

***Aerospace primer*—The first layer and subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance. Adhesion of subsequent coatings. The term does not include primers that are defined as specialty coatings.**

***Aerospace surface preparation*—The removal of contaminants from the surface of an aerospace vehicle or component or the activation or reactivation of the surface in preparation for the application of a coating.**

***Aerospace topcoat*—A coating that is applied over a primer on an aerospace vehicle or component for appearance, identification, camouflage or protection. The term does not include topcoats that are defined as specialty coatings.**

***Aerospace vehicle or component*—A fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to, airplanes, helicopters, missiles, rockets and space vehicles.**

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***Aircraft fluid systems*—Systems that handle hydraulic fluids, fuel, cooling fluids or oils.**

***Aircraft transparency*—An aircraft windshield, canopy, passenger windows, lenses and other components which are constructed of transparent materials.**

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***Antichafe coating*—A coating applied to areas of moving aerospace components that may rub during normal operations or installation.**

***Antique aerospace vehicle or component*—An antique aircraft, as defined by 14 CFR Part 45 (relating to identification and registration marking), or components thereof. An antique aerospace vehicle would not routinely be in commercial or military service in the capacity for which it was designed.**

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***Aqueous cleaning solvent*—A solvent in which water is at least 80% by weight of the solvent.**

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***Bonding maskant*—A temporary coating used to protect selected areas of aerospace parts from strong acid or alkaline solutions during processing for bonding.**

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***Chemical agent-resistant coating (CARC)*—An exterior topcoat applied to aerospace vehicles or**

components designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

Chemical milling maskant—A coating that is applied directly to aluminum aerospace vehicles or components to protect surface areas when chemically milling the component with a Type I or II etchant. The term does not include bonding maskants, line sealers and critical use and seal coat maskants. The term does not include maskants that must be used on an individual part or subassembly with a combination of Type I or II etchants and any of the above types of maskants (for example, bonding, line sealers, and critical use and seal coat). The term also does not include maskants that are defined as specialty coatings.

Cleaning operation—Spray-gun, hand-wipe and flush cleaning operations.

Cleaning solvent—A liquid material used for hand-wipe, spray gun or flush cleaning. The term includes solutions that contain VOCs.

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Closed-cycle depainting system—A dust free, automated process that removes permanent coating in small sections at a time, and maintains a continuous vacuum around the area being depainted to capture emissions.

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Commercial exterior aerodynamic structure primer—An aerospace vehicle or component primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

Commercial interior adhesive—Materials used in the bonding of passenger cabin interior components which meet the Federal Aeronautics Administration (FAA) fireworthiness requirements.

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Compatible epoxy primer—An aerospace vehicle or component primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings.

Compatible substrate primer—Either compatible epoxy primer or adhesive primer applied to aerospace vehicles or components.

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Confined space—A space that is the following:

(1) Is large enough and so configured that an employe can enter and perform assigned work.

(2) Has limited or restricted means for entry or exit (for example, fuel tanks, fuel vessels, and other spaces that have limited means of entry).

(3) Is not suitable for continuous employe occupancy.

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Corrosion prevention system—A coating system applied to aerospace vehicles or components that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

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Critical use and line sealer maskant—A temporary coating applied to aerospace vehicles or components, not covered under other maskant categories, used to protect selected areas of aerospace parts from strong acid or alkaline solutions such as those used in anodizing, plating, chemical milling and processing of magnesium, titanium or high strength steel, high precision aluminum chemical milling of deep cuts, and aluminum chemical milling of complex shapes. Materials used for repairs or to bridge gaps left by scribing operations (that is, line sealer) are also included in this category.

Cryogenic flexible primer—A primer applied to aerospace vehicles or components designed to provide corrosion resistance, flexibility, and adhesion of subsequent coating systems when exposed to loads up to and surpassing the yield point of the substrate at cryogenic temperatures (−275°F and below).

Cryoprotective coating—A coating applied to aerospace vehicles or components that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry and prevent ice formation.

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Cyanoacrylate adhesive—A fast-setting, single component adhesive that cures at room temperature. The term is also known as "super glue."

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Electric or radiation-effect coating—A coating or coating system applied to aerospace vehicles or components engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection and radar avoidance. The term excludes coatings that have been designated "classified" by the Department of Defense.

Electrostatic discharge and electromagnetic interference (EMI) coating—A coating applied to space vehicles, missiles, aircraft radomes and helicopter blades to disperse static energy or reduce electromagnetic interference.

Elevated temperature skydrol resistant commercial primer—A primer, applied primarily to commercial aircraft (or commercial aircraft adapted for military use), that must withstand immersion in phosphate-ester (PE) hydraulic fluid (skydrol 500B or equivalent) at the elevated temperature of 150°F for 1,000 hours.

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Epoxy polyamide topcoat—A coating applied to aerospace vehicles or components when harder films are required or in some areas where engraving is accomplished in camouflage colors.

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***Exempt solvent*—Specified organic compounds that have been designated by the EPA as having negligible photochemical reactivity and are listed in 40 CFR 51.100 (relating to requirements for preparation, adoption and submittal of Implementation Plans).**

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***Fire-resistant (interior) coating*—For civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.**

***Flexible primer*—A primer applied to aerospace vehicles or components that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.**

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***Flight test coating*—A coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.**

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***Flush cleaning*—Removal of contaminants such as dirt, grease, oil and coatings from an aerospace vehicle or component or coating equipment by passing solvent over, into or through the item being cleaned. The solvent simply may be poured into the item being cleaned and then drained or assisted by air or hydraulic pressure or by pumping. The term does not include hand-wipe cleaning operations where wiping, scrubbing, mopping or other hand action is used.**

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***Fuel tank adhesive*—An adhesive used to bond aerospace vehicle components exposed to fuel and which must be compatible with fuel tank coatings.**

***Fuel tank coating*—A coating applied to aerospace vehicle fuel tank components for the purpose of corrosion or bacterial growth inhibition and to assure sealant adhesion in extreme environmental conditions.**

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***Hand-wipe cleaning operation*—Removing contaminants such as dirt, grease, oil and coatings from an aerospace vehicle or component by physically rubbing it with a material such as a rag, paper or cotton swab that has been moistened with a cleaning solvent.**

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***High temperature coating*—An aerospace vehicle or component coating designed to withstand temperatures of more than 350°F.**

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***Insulation covering*—Material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.**

***Intermediate release coating*—A thin coating applied beneath topcoats on aerospace vehicles or components to assist in removing the topcoat in depainting operations and generally to allow the use of less hazardous depainting methods.**

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***Lacquer*—A clear or pigmented coating formulated with a nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.**

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***Limited access space*—Internal surfaces or passages of an aerospace vehicle or component to which coatings cannot be applied without the aid of an airbrush or a spray gun extension for the application of coatings.**

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***Metalized epoxy coating*—A coating applied to aerospace vehicles or components that contains relatively large quantities of metallic pigmentation for appearance or added protection, or both.**

Miscellaneous metal parts and products—Items made of ferrous or nonferrous metals, including, but not limited to, large farm machinery, small farm machinery, small appliances, commercial and industrial machinery, fabricated metal products, and items listed under the *Standard Industrial Classification Code* 3300 through 3900. The term does not include cans, coils, automobiles, light-duty trucks, metal furniture, magnet wire, large appliances, **[fully assembled exteriors of airplaces] aerospace vehicles or components** and automobile refinishing and customized top coating of automobiles and trucks, if production since January 1, 1987, has not exceeded 34 vehicles per day.

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***Mold release*—A coating applied to an aerospace vehicle or component mold surface to prevent the molded piece from sticking to the mold as it is removed.**

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***Nonstructural adhesive*—An adhesive applied to aerospace vehicles or components that bonds nonload bearing aerospace components in noncritical applications and is not included in any other specialty adhesive categories.**

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***Operating parameter value*—A minimum or maximum value established for a control equipment or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation.**

***Optical antireflection coating*—A coating, applied to aerospace vehicles or components, with a low reflectance in the infrared and visible wavelength**

ranges that is used for antireflection on or near optical and laser hardware.

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Part marking coating—Coating or ink used to make identifying markings on aerospace materials, components and assemblies. These markings may be either permanent or temporary.

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Pretreatment coating—An organic coating that contains at least 0.5% acids by weight and is applied directly to metal surfaces of aerospace vehicles and components to provide surface etching, corrosion resistance, adhesion and ease of stripping.

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Radome—The nonmetallic protective housing for aerospace electromagnetic transmitters and receivers (for example, radar, electronic countermeasures).

Rain erosion-resistant coating—A coating or coating system used to protect the leading edges of parts such as flaps, stabilizers, radomes and engine inlet nacelles against erosion caused by rain impact during flight.

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Rocket motor bonding adhesive—An adhesive used in rocket motor bonding applications.

Rocket motor nozzle coating—A catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

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Rubber-based adhesive—A quick setting contact cement applied to aerospace vehicles and components that provides a strong, yet flexible, bond between two mating surfaces that may be of dissimilar materials.

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Scale inhibitor—A coating that is applied to the surface of an aerospace vehicle component prior to thermal processing to inhibit the formation of scale.

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Screen print ink—An ink used in screen printing processes during fabrication of decorative laminates and decals for aerospace vehicles and components.

Sealant—A material used to prevent the intrusion of water, fuel, air or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

Seal coat maskant—A coating applied over a maskant on aerospace vehicles and components to improve abrasion and chemical resistance during production operations.

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Self-priming topcoat—A topcoat that is applied directly to an uncoated aerospace vehicle or component for purposes of corrosion prevention, environmental protection and functional fluid resistance. More than one layer of identical coating formulation may be applied to the vehicle or component. The coating is not subsequently topcoated with any other product formulation.

Semiaqueous cleaning solvent—A solution in which water is a primary ingredient (>60% by weight of the solvent solution as applied must be water).

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Silicone insulation material—An insulating material applied to exterior metal surfaces of aerospace vehicles for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

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Solids—The nonvolatile portion of the coating that after drying makes up the dry film.

Solid film lubricant—A very thin coating, applied to aerospace vehicles or components, consisting of a binder system which contains as its chief pigment material one or more of the following: molybdenum, graphite, polytetrafluoroethylene (PTFE), or other solids that act as a dry lubricant between faying surfaces.

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Space vehicle—A manmade device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment, such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets and test coupons. The term also includes auxiliary equipment associated with test, transport and storage, that through contamination can compromise the space vehicle performance.

Specialty coating—A coating applied to aerospace vehicles or components that, even though it meets the definition of a primer, topcoat or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

Specialized function coating—A coating applied to aerospace vehicles or components that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings included in other specialty coating categories.

Spray gun—A device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

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Structural autoclavable adhesive—An adhesive, cured by heat and pressure in an autoclave, that is used to bond load carrying aerospace components.

Structural nonautoclavable adhesive—An adhesive that is cured under ambient conditions that is used to bond load carrying aerospace components or other critical functions, such as nonstructural bonding in the proximity of engines.

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***Temporary protective coating*—A coating applied to provide scratch or corrosion protection during manufacturing, storage or transportation of aerospace vehicles or components. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. The term does not include coatings that provide protection from acid or alkaline chemical processing.**

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***Thermal control coating*—A coating formulated with specific thermal conductive or radiative properties to permit temperature control of the aerospace vehicle or component substrate.**

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***Touch-up and repair operation*—That portion of the coating operation that is the incidental application of coating used to cover minor imperfections in the coating finish or to achieve complete coverage. The term includes out-of-sequence or out-of-cycle coating.**

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***Type I chemical etchant*—A chemical milling etchant which contains varying amounts of dissolved sulfur but which does not contain amines.**

***Type II chemical etchant*—A chemical milling etchant that is a strong sodium hydroxide solution containing amines.**

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***VOC composite vapor pressure*—The sum of the partial pressures of the compounds defined as VOC's and is determined by the following calculation:**

$$PPc = \sum_{i=1}^{n} \frac{(Wi)(VPi/MWi)}{\frac{WW}{MWw} + \frac{We}{MWe} + \sum_{i=1}^{n} \frac{Wi}{MWi}}$$

where:

W*i* = Weight of the "i"th VOC compound, grams.

Ww = Weight of water, grams.

We = Weight of non-HAP, nonVOC compound, grams.

MWi = Molecular weight of the "i"th VOC compound, G/G-mole.

MWw = Molecular weight of water, G/G-mole.

MWe = Molecular weight of exempt compound, G/G-mole.

PPc = VOC composite partial pressure at 20°, MM HG.

VPi = Vapor pressure of the "i"th VOC compound at 20°, MM HG.

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***Waterborne (water-reducible) coating*—A coating which contains more than 5% water by weight in its volatile fraction, as applied.**

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***Wet fastener installation coating*—A primer or sealant applied to aerospace vehicles or components by dipping, brushing or daubing on fasteners which are installed before the coating is cured.**

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***Wing coating*—A corrosion-resistant topcoat applied to aerospace vehicles or components that is resilient enough to withstand the flexing of the wings.**

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CHAPTER 129. STANDARDS FOR SOURCES

SOURCES OF VOC

§ 129.51. General.

(a) *Equivalency*. Compliance with the requirements of §§ 129.52 and 129.54—**[129.72] 129.73** may be achieved by alterative methods if the following exist:

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(3) Compliance by a method other than the use of a low VOC coating or ink which meets the applicable emission limitation in §§ 129.52, **[and]** 129.67 **and 129.73** (relating to surface coating processes; **[and]** graphic arts systems**; and aerospace manufacturing and rework**) shall be determined on the basis of equal volumes of solids.

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(6) The alternative compliance method is **[approved] incorporated into a plan approval and operating permit reviewed** by the EPA **[as a revision to the State Implementation Plan]**, including the use of an air cleaning device to comply with § 129.52, § 129.67, **[or]** § 129.68(b)(2) and (c)(2) **or § 129.73**.

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(*Editor's Note*: The Department is proposing to add the following section. It is printed in regular type to enhance readability.)

§ 129.73. Aerospace manufacturing and rework.

Except as provided in subsection (a)(1) applies to the manufacture or rework of commercial, civil or military aerospace vehicles or components at any facility located in any county designated as a severe nonattainment area and which has the potential to emit 25 tons per year of VOC's or more or located in another county in this Commonwealth and that has the potential to emit 50 tons per year or more.

(1) This section does not apply to cleaning and coating of aerospace components and vehicles:

(i) At any source conducting research and development for the research and development activities.

(ii) For quality control and laboratory testing.

(iii) For production of electronic parts and assemblies (except for cleaning and coating of completed assemblies).

(iv) For rework operations performed on antique aerospace vehicles or components.

(v) Using touchup, aerosol and Department of Defense "classified" coatings.

(vi) Coating of space vehicles.

(vii) At facilities that use separate formulations in volumes less than 50 gallons per year to a maximum exemption of 200 gallons total for these formulations annually.

(2) Beginning _____(*Editor's Note*: The blank refers to the date of adoption of this proposal in the *Pennsylvania Bulletin*.) a person may not apply to aerospace vehicles or components, aerospace specialty coatings, primers, topcoats and chemical milling maskants including any VOC-containing materials added to the original coating supplied by the manufacturer, that contain VOC's in excess of the limits specified in Table II.

TABLE II

Allowable Content of VOCs in Aerospace Coatings
Allowable VOC Content

Weight of VOC Per Volume of Coating (Minus Water and Exempt Solvents)

	LIMIT	
COATING TYPE	*POUNDS PER GALLON*	*GRAMS PER LITER*
Specialty Coatings		
(1) Ablative Coating	5.0	600
(2) Adhesion Promoter	7.4	890
(3) Adhesive Bonding Primers:		
(a) Cured at 250°F or below	7.1	850
(b) Cured above 250°F	8.6	1,030
(4) Adhesives:		
(a) Commercial Interior Adhesive	6.3	760
(b) Cyanoacrylate Adhesive	8.5	1,020
(c) Fuel Tank Adhesive	5.2	620
(d) Nonstructural Adhesive	3.0	360
(e) Rocket Motor Bonding Adhesive	7.4	890
(f) Rubber-Based Adhesive	7.1	850
(g) Structural Autoclavable Adhesive	0.5	60
(h) Structural Nonautoclavable Adhesive	7.1	850
(5) Antichafe Coating	5.5	660
(6) Chemical Agent-Resistant Coating	4.6	550
(7) Clear Coating	6.0	720
(8) Commercial Exterior Aerodynamic Structure Primer	5.4	650
(9) Compatible Substrate Primer	6.5	780
(10) Corrosion Prevention Compound	5.9	710
(11) Cryogenic Flexible Primer	5.4	645
(12) Cryoprotective Coating	5.0	600
(13) Electric or Radiation-Effect Coating	6.7	800
(14) Electrostatic Discharge and Electromagnetic Interference (EMI) Coating	6.7	800
(15) Elevated Temperature Skydrol Resistant Commercial Primer	6.2	740
(16) Epoxy Polyamide Topcoat	5.5	660
(17) Fire-Resistant (Interior) Coating	6.7	800
(18) Flexible Primer	5.4	640
(19) Flight-Test Coatings:		
(a) Missile or Single Use Aircraft	3.5	420
(b) All Other	7.0	840
(20) Fuel-Tank Coating	6.0	720
(a) High-Temperature Coating	7.1	850
(21) Insulation Covering	6.2	740
(22) Intermediate Release Coating	6.2	750
(23) Lacquer	6.9	830
(24) Maskants:		
(a) Bonding Maskant	10.2	1,230
(b) Critical Use and Line Sealer Maskant	8.6	1,020
(c) Seal Coat Maskant	10.2	1,230
(25) Metallized Epoxy Coating	6.2	740
(26) Mold Release	6.5	780
(27) Optical Anti-Reflective Coating	6.2	750
(28) Part Marking Coating	7.1	850
(29) Pretreatment Coating	6.5	780
(30) Rain Erosion-Resistant Coating	7.1	850
(31) Rocket Motor Nozzle Coating	5.5	660
(32) Scale Inhibitor	7.3	880
(33) Screen Print Ink	7.0	840

COATING TYPE	LIMIT POUNDS PER GALLON	LIMIT GRAMS PER LITER
(34) Sealants:		
(a) Extrudable/Rollable/Brushable Sealant	2.0	240
(b) Sprayable Sealant	5.0	600
(35) Self-Priming Topcoat	3.5	420
(36) Silicone Insulation Material	7.1	850
(37) Solid Film Lubricant	7.3	880
(38) Specialized Function Coating	7.4	890
(39) Temporary Protective Coating	2.7	320
(40) Thermal Control Coating	6.7	800
(41) Wet Fastener Installation Coating	5.6	675
(42) Wing Coating	7.1	850
Primers, Topcoats, and Chemical Milling Maskants		
(1) Primers	2.9	350
(2) Topcoats	3.5	420
(3) Chemical Milling Maskants (Type I/II)	1.3	160

(3) The mass of VOC per combined volume of VOC and coating solids, less water and exempt compounds shall be calculated by the following equation:

$$VOC = \frac{(Wv - Ww - Wex)(Dc)}{100\% - (Ww)(Dc/Dw) - (Wex)Dc/Dex)}$$

Where

VOC = VOC content in grams per liter (g/l) of coating less water and exempt solvents,

Wo = Weight of organic volatiles, % (Wv-Ww-Wex),

Wv = Weight of total volatiles, % (100% − Weight % Nonvolatiles),

Ww = Weight of water, %,

Wex = Weight of exempt solvent, %

Vw = Volume of water,

Vex = Volume of exempt solvent, %,

Dc = Density of coating, g/l at 25°C,

Dw = Density of water, 0.997×10^3 g/l at 25°C, and

Dex = Density of exempt solvent, g/l, at 25°C

To convert from grams per liter (g/l) to pounds per gallon (lb/gal), multiply the result (VOC content) by 8.345×10^{-3} (lb/gal/g/l).

(4) Except as provided in paragraph (5), beginning _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal in the *Pennsylvania Bulletin*.) a person shall use one or more of the following application techniques in applying primer or topcoat to aerospace vehicles or components: flow/curtain coat; dip coat; roll coating; brush coating; cotton-tipped swab application; electrodeposition (DIP) coating; high volume low pressure (HVLP) spraying; electrostatic spray; or other coating application methods that achieve emission reductions equivalent to HVLP or electrostatic spray application methods.

(5) The following situations are exempt from application equipment requirements listed in paragraph (4):

(i) The use of an airbrush or an extension on the spray gun to properly apply coatings to limited access spaces.

(ii) The application of specialty coatings.

(iii) The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that the applicant has demonstrated and the Department has determined cannot be applied by any of the application methods specified in paragraph (4).

(iv) The application of coatings that normally have a dried film thickness of less than 0.0013 centimeter (0.0005 in.) when the applicant has demonstrated and the Department has determined cannot be applied by any of the application methods specified in paragraph (4).

(v) The use of airbrush application methods for stenciling, lettering and other identification markings.

(vi) The use of hand-held spray can application methods.

(vii) Touch-up and repair operations.

(6) Except as provided in paragraph (7), beginning _____ (*Editor's Note*: The blank refers to the effective date of adoption of this proposal in the *Pennsylvania Bulletin*.) a person may not use solvents for hand-wipe cleaning of aerospace vehicles or components unless the cleaning solvents do one of the following:

(i) Meet the definition of "aqueous cleaning solvent" in § 121.1 (relating to definitions).

(ii) Have a VOC composite vapor pressure less than or equal to 45 millimeters (MM HG) at 20°C.

(7) The following aerospace vehicle and component solvent cleaning operations are exempt from the requirements in paragraph (6):

(i) Cleaning during the manufacture, assembly, installation, maintenance or testing of components of breathing oxygen systems that are exposed to the breathing oxygen.

(ii) Cleaning during the manufacture, assembly, installation, maintenance or testing of parts, subassemblies or assemblies that are exposed to strong oxidizers or reducers (for example, nitrogen tetroxide, liquid oxygen, hydrazine).

(iii) Cleaning and surface activation prior to adhesive bonding.

(iv) Cleaning of electronics parts and assemblies containing electronics parts.

(v) Cleaning of aircraft and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems.

(vi) Cleaning of fuel cells, fuel tanks and confined spaces.

(vii) Surface cleaning of solar cells, coated optics and thermal control surfaces.

(viii) Cleaning during fabrication, assembly, installation and maintenance of upholstery, curtains, carpet and other textile materials used in or on the interior of the aircraft.

(ix) Cleaning of metallic and nonmetallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components.

(x) Cleaning of aircraft transparencies, polycarbonate or glass substrates.

(xi) Cleaning and solvent usage associated with research and development, quality control or laboratory testing.

(xii) Cleaning operations, using nonflammable liquids, conducted within 5 feet of any alternating current (AC) or direct current (DC) electrical circuit on an assembled aircraft once electrical power is connected, including interior passenger and cargo areas, wheel wells and tail sections.

(xiii) Cleaning operations identified in an essential use waiver under section 604(d)(1) of the Clean Air Act (42 U.S.C.A. § 7671c(d)(1)) or a fire suppression or explosion prevention waiver under section 604(g)(1) of the Clean Air Act (42 U.S.C.A. § 7671c(g)(1)) which has been reviewed and approved by the EPA and the voting parties of the International Montreal Protocol Committee.

(8) Cleaning solvents (except for semiaqueous cleaning solvents) used in the flush cleaning of aerospace vehicles, components, parts, and assemblies and coating unit components, shall be emptied into an enclosed container or collection system that is kept closed when not in use or captured with wipers which comply with the housekeeping requirements of paragraph (10). Aqueous cleaning solvents are exempt from these requirements.

(9) Spray guns used to apply aerospace coatings shall be cleaned by one of the following:

(i) An enclosed spray gun cleaning system that is kept closed when not in use. Leaks shall be repaired within 14 days from when the leak is first discovered. Each owner or operator using an enclosed spray gun cleaner shall visually inspect the seals and all other potential sources of leaks at least once per month. Each inspection shall occur while the spray gun cleaner is in operation. If the leak is not repaired by the 15th day after detection, the solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued.

(ii) Unatomized discharge of solvent into a waste container that is kept closed when not in use.

(iii) Disassembly of the spray gun and cleaning in a vat that is kept closed when not in use.

(iv) Atomized spray into a waste container that is fitted with a device designed to capture atomized solvent emissions.

(10) The owner or operator of an affected facility shall implement the following housekeeping measures for cleaning solvents.

(i) Fresh and used cleaning solvents, except aqueous and semiaqueous cleaning solvents, used in solvent cleaning operations shall be stored in nonabsorbent, nonleaking containers. The containers shall be kept closed at all times except when filling or emptying.

(ii) Cloth and paper, or other absorbent applicators, moistened with cleaning solvents, except aqueous cleaning solvents, shall be stored in closed, nonabsorbent, nonleaking containers. Cotton-tipped swabs used for very small cleaning operations are exempt.

(iii) Handling and transfer procedures shall minimize spills during filling and transferring the cleaning solvent, except aqueous cleaning solvents, to or from enclosed systems, vats, waste containers and other cleaning operation equipment that holds or stores fresh or used cleaning solvents.

(11) The owner or operator of an affected facility may comply with this section by using approved air pollution control equipment provided that the following exist:

(i) The control system has combined VOC emissions capture and control equipment efficiency of at least 81% by weight.

(ii) The owner or operator received approval from the Department of a monitoring plan that specifies the applicable operating parameter value, or range of values, to ensure ongoing compliance with this section. The monitoring device shall be installed, calibrated, operated and maintained in accordance with the manufacturer's specifications and the Department's approval.

(iii) The owner or operator shall record monitoring parameters as specified in the approved monitoring plan.

(12) The owner or operator of an affected facility shall maintain records in accordance with §§ 129.51 and 129.52 (relating to general; and surface coating processes) including:

(i) A current list of coatings in use categorized in accordance with Table II showing VOC content as applied and usage on an annual basis.

(ii) A current list of cleaning solvents used and annual usage for hand wiping solvents including the water content of aqueous and semiaqueous solvents and the vapor pressure and composite vapor pressure of all vapor pressure compliant solvents and solvent blends.

(iii) A current list and annual usage information for exempt hand-wipe cleaning solvents with a vapor pressure greater than 45 millimeters of mercury (MM HG) used in exempt hand-wipe cleaning operations.

[Pa.B. Doc. No. 97-1348. Filed for public inspection August 22, 1997, 9:00 a.m.]

[25 PA. CODE CH. 94]
Municipal Wasteload Management

The Environmental Quality Board (Board) proposes to amend Chapter 94 (relating to municipal wasteload management). The amendments are proposed as the result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative and Executive Order 1996-1 (Regulatory Review and Promulgation). The De-

partment identified specific sections in Chapters 94 as obsolete, too prescriptive or written in a way that causes significant noncompliance. This proposed rulemaking is intended to meet the goals of these initiatives by correcting identified regulatory deficiencies.

This proposal was adopted by the Board at its meeting of June 17, 1997.

A. *Effective Date*

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

B. *Contact Persons*

For further information contact Milt Lauch, Acting Chief, Division of Wastewater Management, P. O. Box 8465, Rachel Carson State Office Building, Harrisburg, PA 17105-8465, (717)787-8184 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717)787-7060. Information regarding submitting comments on this proposal appears in Section J of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department's Web site (http://www.dep.state.us).

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of section 5 of The Clean Streams Law (35 P. S. § 691.5) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510.20).

D. *Background and Purpose*

Over the past year, the Department has been conducting an overall review of its existing regulations through its Regulatory Basics Initiative as outlined in 25 Pa.B. 3343 (August 19, 1995) and through Governor Ridge's Executive Order 1996-1, (Regulatory Review and Promulgation) dated February 6, 1996. These initiatives were designed with the goal of improving Department regulations. The amendments being proposed in this rulemaking are one of a number of proposed rulemakings resulting from these initiatives.

Chapter 94 establishes the framework for monitoring sewer system and sewage treatment plant loading rates; projecting future loads; limiting additional contributions of sewage to overloaded facilities; and planning for necessary facility expansion. In addition, this chapter represents a vital pollution prevention element of the State water quality management program. Section 94.12 (relating to annual report) has been identified as both overly prescriptive and the source of noncompliance due to its complexity. In addition, other sections of the chapter need to be updated. Sections 94.61—94.64 (relating to industrial waste pretreatment programs) are obsolete since the Department has not received delegation from the Environmental Protection Agency (EPA) to administer the industrial waste pretreatment program and does not intend to seek delegation to administer these provisions. The proposed amendments were reviewed and approved by the Water Subcommittee of the Air and Water Quality Technical Advisory Committee.

E. *Summary of Regulatory Requirements*

§ 94.1 (relating to definitions)

Section 94.1 would be amended by deleting obsolete definitions and definitions related to the pretreatment regulations which are being proposed for deletion. The definitions which would be deleted include "categorical pretreatment standard," "control authority," "National pretreatment standard or pretreatment standard," "overflow," "pretreatment," "pretreatment program," "pretreatment requirement" and "regional office." Several new definitions are being added to section 94.1 to define terms commonly used in the wasteload management program as well as terms used in the chapter which may have previously been confusing. The definitions proposed for addition include "combined sewer overflow (CSO)," "hydraulic design capacity," "monthly average flow," "organic design capacity," "sanitary sewer overflow" and "separate sanitary sewer system." In addition, several of the definitions currently in § 94.1 are being modified for clarity or to be consistent with definitions in other existing or proposed amendments. These definitions include "combined sewer system," "exception to ban," "hydraulic overload," "official plan" and "publicly owned treatment works (POTW)."

§ 94.2 (relating to purpose)

This section is proposed to be amended to emphasize the proactive pollution prevention purpose of Chapter 94. In addition, the objectives listed in this section would be deleted. Revised objectives are proposed to be included in § 94.3 (relating to scope).

§ 94.3 (relating to scope)

The existing language which discusses the impact of Chapter 94 on existing bans and the pretreatment requirements would be deleted because it is obsolete. New language would be added to this section to include an updated description of the scope of the regulations which is currently in § 94.2.

§ 94.12 (relating to annual report)

Subsection (a) of this section is reworded for clarity. The existing language in subsection (a)(1) and (2), relating to the content of loading graphs, is proposed to be deleted in its entirety and replaced with a new subsection (a)(1) and (2) providing less prescriptive requirements for loading graphs. The text of subsection (a)(4)—(6), relating to overload reduction plans and industrial waste discharges and other proposed new discharges to the sewerage system, are proposed for deletion as too prescriptive. A new subsection (a)(4) is proposed to provide the required format for the annual report related to anticipated future contributions of sewage from new land development, and new subsection (a)(8) proposes rewording of the requirements for reporting industrial wastes discharged to the system. A new subsection (a)(9) contains the same requirement as the deleted subsection (a)(4).

§ 94.13 (relating to measuring, indicating and recording devices)

The existing text of this section was rewritten for clarity. A new subsection (b) is proposed to establish a new requirement to calibrate flow measuring equipment annually.

§ 94.14. (relating to approval of official plans and revisions)

The act of December 14, 1994 (P. L. 1250, No. 149) (Act 149) resulted in substantial amendments to the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20). As part of those amendments, the definition of "supplement" was added. A supplement is a new land development planning module reviewed by a local agency delegated authority by the Department to review and approve the modules. In addition, the Act 149 amendments also established an exemption from the planning requirements for certain types of proposals intending the

use of existing public sewerage facilities or extension of public sewers. The proposed amendments incorporate these changes into this section.

§ 94.15 (relating to pretreatment program development)

The Commonwealth has not accepted delegation of the pretreatment program from the EPA. The relevant parts of this section related to this delegation would be deleted. The provisions related to the requirement that sewerage facilities owners address industrial contributions of pollutants to publicly-owned treatment works are retained since they are independent of delegation of the Federal pretreatment program.

§§ 94.61—94.64 (relating to pretreatment program requirements; pretreatment program submission; pretreatment program approval; and reporting requirements for POTWs)

These sections are also related to the Federal pretreatment program. The Commonwealth has not accepted delegation of the pretreatment program from the EPA and does not intend to accept this delegation in the future. Accordingly, these provisions are unnecessary and are proposed for deletion.

F. Benefits, Costs and Compliance

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments. It also requires a statement of the need for, and a description of forms, reports or other paperwork required as a result of the proposal.

These proposed amendments to Chapter 94 are necessary to implement the Department's Regulatory Basics Initiative and the goals of Executive Order 1996-1. Sections of Chapter 94 were identified as obsolete, overly prescriptive or written in a way that causes significant noncompliance.

Benefits

Individuals, consultants and sewage treatment plant permittees will benefit from the proposed amendments. The proposed simplification of the requirements related to the development of an annual report describing the organic and hydraulic wasteload entering a wastewater treatment plant will assist permittees in attaining compliance and should cut costs associated with the development of these reports. Cost savings are estimated at $753,000 per year. Additionally, eliminating obsolete regulations and modifying regulations which are too prescriptive while clarifying the remaining regulatory language will eliminate confusion regarding the regulations and promote compliance.

Compliance Costs

The amendments to Chapter 94 do not create new regulatory requirements; rather, they eliminate unnecessary existing requirements and clarify existing text. The proposed amendments will not impose additional costs on anyone.

Compliance Assistance Plan

The Department does not intend to develop a compliance assistance plan because of the lack of an adverse impact on compliance.

Paperwork Requirements

There will be no additional forms, reports or other paperwork that will be required as the result of these proposed amendments. This proposal is intended to reduce existing paperwork requirements.

G. *Pollution Prevention*

In keeping with Governor Ridge's interest in encouraging pollution prevention solutions to environmental problems, these proposed amendments have incorporated the following provisions and incentives to meet that goal:

Municipal wasteload management as described in Chapter 94 is a pollution prevention program. The proposed amendments require that permittees of wastewater treatment facilities project, through an annual evaluation of the permitted facilities, the potential for either a hydraulic or organic overload 5 years into the future. When these overloads are projected, the permittee is required to take appropriate action to either eliminate the source of the overload or expand or upgrade the wastewater facilities to handle the projected increased loading. The proposed rulemaking would simplify and clarify the annual evaluation process. This should increase compliance with these regulations.

H. *Sunset Review*

This proposal will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the amendments effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 12, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department 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 by the Department, the Governor and the General Assembly before publication of the final-form regulations.

J. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail; Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by September 22, 1997. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by September 22, 1997. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@.dep.state.pa.us and must also be received by the Board by September 22, 1997. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic com-

ments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairperson

Fiscal Note: 7-322. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 94. MUNICIPAL WASTELOAD MANAGEMENT

GENERAL PROVISIONS

§ 94.1. Definitions.

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

* * * * *

[*Categorical pretreatment standard*—A national pretreatment standard promulgated by the EPA under section 307(b) and (c) of the Clean Water Act (33 U.S.C.A. § 1317(b) and (c)) as set forth in 40 CFR Chapter 1, Subchapter N (relating to effluent guidelines and standards) for a specific category of industry which specifies quantities or concentrations of pollutants or pollutant properties which may be discharged or introduced to a POTW by existing or new source industrial users.]

* * * * *

Combined sewer system—A sewer system **[or parts thereof]** which **[carry] has been designed to service as** both **a** sanitary **[sewage] sewer** and **[storm-water] a storm sewer.**

***Combined sewer overflow (CSO)*—An intermittent overflow, or other untreated discharge from a municipal combined sewer system (including domestic, industrial and commercial wastewater and stormwater) which results from a flow in excess of the dry weather carrying capacity of the system.**

* * * * *

[*Control Authority*—One of the following:

(i) The POTW, if the POTW has received approval from the Department or the EPA for its industrial waste pretreatment program under this chapter.

(ii) The Department, if POTW's pretreatment program has not been approved by the Department or the EPA.]

* * * * *

Exception to a ban—An allowable connection to a sewer system even though a ban is in effect**[, prohibiting additional connections to that system or a portion of it].**

* * * * *

***Hydraulic design capacity*—The highest monthly average flow, expressed in millions of gallons per day, at which a sewage treatment facility is expected to consistently provide the required treatment or at which a conveyance structure, device or pipe is expected to properly function without creating a backup, surcharge or overflow.**

Hydraulic overload—The condition that occurs when the **monthly average flow of the sewage treatment facility or other portion of the sewage system exceeds the** hydraulic **design capacity for 3 consecutive months out of the proceeding 12 months [portion of the load, as measured by the average daily flow entering a plant, exceeds the average daily flow upon which the permit and the plant design are based during each month of a recent 3-month period]** or when the flow in a portion of the system exceeds its hydraulic carrying capacity.

* * * * *

***Monthly average flow*—The total flow received at a sewerage facility or another portion of the sewer system during any 1-calendar month divided by the number of days in that month. This value is always expressed in millions of gallons per day (MGD).**

[*National pretreatment standard or pretreatment standard*—A regulation containing pollutant discharge limits or prohibitions promulgated by the EPA under section 307(b) and (c) of the Clean Water Act, which applies to industrial users. The term includes general and specific prohibitions under § 97.91(a) and (b) (relating to pretreatment requirements for industrial users), specific local limits established under § 97.91(c) and local prohibitive standards.]

* * * * *

Official **[*Plan*] *plan***—A comprehensive plan for the provision of adequate sewage systems adopted by a municipality **[or municipalities]** possessing authority or jurisdiction over the provision of the systems and submitted to and approved by the Department as provided by the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) and **[Chapters] Chapter** 71 **[and 73]** (relating to administration of sewage facilities planning program**[; and standards for sewage disposal facilities]).**

* * * * *

***Organic design capacity*—The highest daily organic load at which a sewage treatment facility or a portion thereof is expected to provide a specific predetermined level of treatment. This capacity is normally specified in the water quality management permit (part II permit issued under Chapter 91) (relating to general provisions)).**

[*Overflow*—The systematic discharge of a mixture of partially treated or untreated sewage and stormwater from a device or structure of combined sewerage facilities which is in excess of the downstream hydraulic carrying capacity of those facilities.

***POTW*—A publicly owned treatment works as defined by section 212 of the Clean Water Act (33 U.S.C.A. § 1292) which is owned by a state or municipality, as defined by section 502(4) of the**

Clean Water Act (33 U.S.C.A. § 1362(4)), including sewers that convey wastewater to the treatment works. The term does not include pipes, sewers or other conveyances not connected to a facility providing treatment. The term includes the municipality, as defined in section 502(4) of the Clean Water Act, which has jurisdiction over the indirect discharges to and the discharges from this type of treatment works.]

***POTW—Publicly-owned treatment works*—Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. The term includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.**

* * * * *

[*Pretreatment*—The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing the pollutants into a POTW. This reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by § 97.91(d)(4). If wastewater from a regulated process is mixed with unregulated wastewater or with wastewater from another regulated process, the mixture shall meet an adjusted pretreatment limit calculated under § 97.91(d)(5).

***Pretreatment program*—A program administered by a POTW that meets the criteria established in §§ 94.61 and 94.62 (relating to pretreatment program requirements; and pretreatment program submission) and which has been approved by the EPA under 40 CFR 403.11 (relating to approval procedures for POTW pretreatment programs and POTW granting of removal credits) or the Department under § 94.63 (relating to pretreatment program approval).**

***Pretreatment requirement*—A substantive or procedural requirement related to pretreatment, other than a National pretreatment standard, imposed on an industrial user.]**

* * * * *

[*Regional office*—The Regional Water Quality Manager of the Bureau of Water Quality Management of the Department.]

***Sanitary sewer overflow*—An untreated discharge from a sanitary sewer system (which is not a combined sewer system), which results from a flow in excess of the carrying capacity of the system.**

***Separate sanitary sewer system*—A sewer system or part thereof which is specifically designed and intended to carry sanitary sewage separate from stormwater.**

* * * * *

§ 94.2. Purpose.

This chapter is intended to **[require] prevent pollution by requiring** the owners and operators of sewerage facilities to manage wasteloads **[discharged to] entering** the sewerage facilities. **[in order to accomplish the following objectives:**

(1) Prevent the occurrence of overloaded sewerage facilities.

(2) Limit additional extensions and connections to an overloaded sewer system or a sewer system tributary to an overloaded plant.

(3) Prevent the introduction into POTWs of pollutants which will interfere with the operation of the plant or pass through or otherwise be incompatible with the plant.

(4) Improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.]

§ 94.3. Scope.

[Nothing in this chapter affects the validity of the following:

(1) A final, unappealed ban imposed by the Department prior to the date of adoption of this chapter; except that the ban may be modified or removed under §§ 94.41 and 94.42 (relating to elimination of overload; and reduction of overload), and exceptions to the bans will be granted under §§ 94.51—94.57 (relating to exception to bans).

(2) Pretreatment requirements established by a control authority if the requirements are no less stringent than the national pretreatment standards, limitations established under the Clean Water Act, regulations thereunder or this title.]

This chapter requires owners of sewerage facilities to properly plan, manage and maintain sewerage facilities in a manner which will do the following:

(1) Anticipate and prevent overloading sewerage facilities.

(2) Limit additional extensions and connections to an overloaded sewer system or a sewer system tributary to an overloaded plant.

(3) Prevent the introduction into POTWS of pollutants which will interfere with the operation of the plant or pass through or otherwise be incompatible with the treatment process or sewerage facility.

(4) Improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

§ 94.12. Annual report.

(a) **[In order to] To** provide for **[a] annual** review of **[the load on]** sewerage facilities and **[to insure] ensure** that there is sufficient time to **address existing operational or maintenance problems or to** plan and construct needed additions, **[plant] sewerage facilities** permittees shall submit a complete and accurate **wasteload management** annual report, in duplicate, by March 31 of each year to the **appropriate** Regional Office **of the Department [, subject to the review of the Department]**. The report shall **use a brief summary form provided by the Department and** include the following:

[(1) A hydraulic loading graph which shall show the following:

(i) The hydraulic loading on the plant plotted from average daily flows for each month of the past 5 years.

(ii) A projection of the anticipated hydraulic loading on the plant for each of the next 5 years.

(iii) The hydraulic loading approved by the permit.

(2) An organic loading graph which shall show the following:

(i) The organic loading on the plant plotted from average daily loads for each month of the past five years.

(ii) A projection of the anticipated organic loading on the plant for each of the next five years.

(iii) The organic loading approved by the permit.]

(1) A line graph depicting the monthly average flows (expressed in millions of gallons per day) for each month for the past 5 years and projecting the flows for the next 5 years. The graph shall also include a line depicting the hydraulic design flow (also expressed in million of gallons per day) of the facility included in the water quality management permit (Part II permit issued under Chapter 91 (relating to general provisions)).

(2) A line graph depicting the average daily organic loading (expressed as pounds per day of BOD_5) for each month for the past 5 years and projecting the average daily organic loading for the next 5 years. The graph shall also include a line depicting the organic loading design (also expressed in pounds per day of BOD_5) of the facility included in the water quality management permit (Part II permit issued under Chapter 91 (relating to general provisions).)

(3) A brief discussion of the basis for the **5 year** projections referred to in paragraphs (1) and (2), as well as a description of the time needed to expand the plant to meet the load projections, if necessary. Data used to support those projections should be included in an appendix to the annual report.

[(4) A proposed plan to reduce or eliminate present or projected overloaded conditions under §§ 94.21 and 94.22 (relating to existing overload; and projected overload).

(5) A report of industrial wastes discharged into the sewer system, which shall include the following:

(i) A copy of the ordinance or regulation governing industrial waste discharges to the sewer system or a copy of amendments adopted since the initial submission under this chapter, if it has not previously been submitted.

(ii) A discussion of the program for surveillance and monitoring of industrial waste discharges into the sewer system during the past year.

(iii) A discussion of specific problems in the sewer system or at the plant, known or suspected to be caused by industrial waste discharges and a summary of the steps being taken to alleviate or eliminate the problems. The discussion should include a list of industries known to be discharging wastes which create problems in the plant or in the sewer system and an action taken to eliminate the problem or prevent its recurrence.

(6) A description accompanied by a plot plan or map of sewer extensions constructed within the past calendar year, sewer extensions approved in the past year in accordance with the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) and the provisions of Chapter 71 (relating to administration of the sewage facilities program), but not yet constructed, and all known proposed projects which shall require public sewers but are in the preliminary planning stages. The description shall include areas and populations served or to be served by each extension.]

(4) A map showing all sewer extensions constructed within the past calendar year, sewer extenstions approved in the past year in accordance with the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20) and Chapter 71 (relating to administration of the sewage facilities program), but not yet constructed, and all known proposed projects which require public sewers but are in the preliminary planning stages. The map shall be accompanied by a list summarizing each extension or project and the population to be served by the extension or project. If a sewer extension approval or proposed project included schedules describing how the project will be completed over time, the listing should include that information and the effect this build-out-rate will have on population served.

[(7)] (5) ***

[(8)] (6) ***

[(9)] (7) ***

(8) A report, if applicable, of industrial wastes discharged into the sewer system. This report shall include the following:

(i) A copy of any ordinance or regulation governing industrial waste discharges to the sewer system or a copy of amendments adopted since the initial submission of the ordinance or regulation under this chapter, if it has not previously been submitted.

(ii) A discussion of the permittee's or municipality's program for surveillance and monitoring of industrial waste discharges into the sewer system during the past year.

(iii) A discussion of specific problems in the sewer system or at the plant, known or suspected to be caused by industrial waste discharges and a summary of the steps being taken to alleviate or eliminate the problems. The discussion shall include a list of industries known to be discharging wastes which create problems in the plant or in the sewer system and action taken to eliminate the problem or prevent its recurrence.

(9) A proposed plan to reduce or eliminate present or projected overloaded conditions under §§ 94.21 and 94.22 (relating to existing overload; and projected overload).

* * * * *

§ 94.13. Measuring, indicating and recording devices.

(a) [If the hydraulic loading on the] A sewage treatment plant **[exceeds] or other part of a facility which receives or will receive within the next 5 years, flows exceeding** 100,000 gallons per day **[or will exceed 100,000 gallons per day in the next 5**

years, and if the plant is not] shall be equipped to continuously measure, indicate and record the **influent** flow**[, equipment to continuously measure, indicate and record the flow shall be installed within 6 months of the adoption of this chapter]. The permittee of the sewage facility shall install equipment within** 6 months of the **final day for submitting the** annual report **[period] required under § 94.12 (relating to annual report)** when such a flow **[became] becomes** evident.

(b) Flow measuring, indicating and recording equipment shall be calibrated annually, and the calibration report shall be included in the annual report submitted under § 94.12.

§ 94.14. Approval of official plans and revisions.

No official plan **[or], offical plan** revision **or supplement** will be approved **[nor will a supplement be considered adequate]** by the Department **or delegated agency, nor will an exemption from the planning requirements be granted** under Chapter 71 (relating to administration of the sewage facilities planning program) that is inconsistent with the requirements of this chapter.

§ 94.15. Pretreatment program development.

[(a) A POTW, in] In cases where pollutants contributed by industrial users result in interference or pass through, and the violation is likely to recur, **a POTW or other sewerage facilities owner** shall develop and implement specific local limits for industrial users and other users, as appropriate, that together with appropriate POTW facility or operational changes, are necessary to ensure renewed or continued compliance with the POTW's NPDES permit or sludge use or disposal practices.

[(b) A POTW shall develop, submit and implement a pretreatment program under §§ 94.61—94.63 (relating to pretreatment program requirements; pretreatment program submission; and pretreatment program approval) if one of the following applies:

(1) The total design flow of the POTW, or combination of POTWs operated by the same permittee, is greater than 5 million gallons per day (MGD) and contains pollutants from industrial users which pass through or interfere with the operation of the POTW or are otherwise subject to national pretreatment standards.

(2) The total design flow of the POTW, or combination of POTWs operated by the same permittee, is 5 (MGD) or less and the Department or the POTW determines that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge or other circumstances warrant the development of a pretreatment program to prevent interference with the POTW or pass through of pollutants to receiving waters.

(c) The Department may modify or reissue the POTW's NPDES permit to accomplish any of the following:

(1) Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health or the environment.

(2) Coordinate the issuance of a section 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program.

(3) Incorporate a modification of the permit approved under section 301(h) or (i) of the Clean Water Act (33 U.S.C.A. § 1311(h) or (i)).

(4) Incorporate an approved POTW pretreatment program in the POTW permit.

(5) Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit.

(d) A POTW required to develop a pretreatment program under subsection (b)(1) or (2) shall have an approved pretreatment program no later than 3 years after the reissuance or modification of its NPDES permit but in no case later than July 1, 1983. A POTW, whose NPDES permit is modified under section 301(h) of the Clean Water Act (33 U.S.C.A. § 1311(h)) shall have a pretreatment program within less than 3 years as provided for in 40 CFR Part 125, Subpart G (relating to criteria for modifying the secondary treatment requirements under section 301(h) of the Clean Water Act). A POTW identified after July 1, 1983 as being required to develop a POTW pretreatment program under subsection (b) shall develop and submit the program for approval as soon as possible, but in no case later than 1 year after written notification from the Department of the identification. The POTW pretreatment program shall meet the criteria in § 94.61 and shall be administered by the POTW to ensure compliance by industrial users and other users as appropriate with applicable pretreatment standards and requirements.

(e) A POTW required to develop a pretreatment program under subsection (b)(1) or (2) shall develop and enforce specific local limits to implement the prohibitions listed in § 97.91(a) and (b) (relating to pretreatment requirements for industrial users).]

INDUSTRIAL WASTE PRETREATMENT PROGRAMS

(*Editor's Note*: The Department is proposing to delete §§ 94.61—94.64 as they currently appear in the *Pennsylvania Code* at pages 94-20—94-27 (serial pages (228290)—(229297)).

§§ 94.61—94.64. (Reserved).

[Pa.B. Doc. No. 97-1349. Filed for public inspection August 22, 1997, 9:00 a.m.]

[25 PA. CODE CHS. 121 AND 123]
Regulatory Basics Initiative #3 (Malodors)

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 123 (relating to general provisions; and standards for contaminants) to read as set forth in Annex A.

The changes to Chapter 121 modify the definition of "malodor" and add a definition of "odor investigation."

The changes to Chapter 123 modify the Department of Environmental Protection's (Department) existing program for investigating and addressing malodor complaints. These changes are in response to comments received as part of the Regulatory Basics Initiative concerning malodors.

This notice is given under Board order at its meeting of June 17, 1997.

A. *Effective Date*

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663, or M. Dukes Pepper, Jr., Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. *Statutory Authority*

This action is being taken under the authority of section 5(a)(1) of the Air Pollution Control Act (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background of the Amendments*

The Regulatory Basics Initiative was announced in August 1995, as an overall review of the Department's regulations and policies. The Department solicited public comments in August of 1995 by giving the regulated community, local governments, environmental interests and the general public the opportunity to identify specific regulations which are either more stringent than Federal standards, serve as barriers to innovation, are obsolete or unnecessary, or which impose costs beyond reasonable environmental benefits or serve as barriers to adopting new environmental technologies, recycling and pollution prevention.

In February 1996, the Governor issued Executive Order 1996-1 (Regulatory Review and Promulgation) establishing standards for the development and promulgation of regulations. This proposal meets the requirements of Executive Order 1996-1.

These proposed amendments are the third in a series of regulatory proposals implementing changes to the Department's air resource regulations resulting from the Regulatory Basics Initiative. These proposed changes implement recommendations received from both the public and the regulated community concerning the Department's program for addressing malodors.

Approximately 30% of the citizen complaints received by the Department's regional air program offices relate to malodors. The Department investigates each of these complaints and works with facility owners and operators and the public to resolve the complaints. The existing regulations and Court decisions interpreting them make it difficult and time consuming to document and resolve malodor problems. This proposal streamlines both the complaint and investigation process and establishes clear limits of responsibility for facility owners.

The Department worked with the Air Subcommittee of the Air and Water Quality Technical Advisory Committee (AWQTAC) in the development of these regulations. At its April 17, 1997, meeting, the Air Subcommittee acting on behalf of AWQTAC recommended adoption of the proposed amendments.

E. *Summary of Regulatory Revisions*

The proposed change to the definition of "malodor" retains the existing procedure that a member of the public must initially report the malodor and authorizes the Department to document that malodor in the course of an odor investigation. This complaint driven process authorizes the Department to conduct an investigation in response to a citizen complaint. The new definition of "odor investigation" requires the Department to investigate the source and frequency of the odors and establishes that facility inspection, surveillance, affidavits or odor logs can be used to document a malodor.

The changes to the substantive provisions of § 123.31 (relating to limitations) provide, in subsection (c), that a facility which controls malodorous air contaminants through the use of best available technology (BAT) will not be required to further reduce residual odors for a 5-year period. This provision establishes a limit on a facility's obligation based on the technology available to control odors. This limitation on responsibility lasts for a single permit term of 5 years. This provision creates certainty for both the public and facility operators concerning the extent of responsibility for emissions of malodorous air contaminants. Section 123.31(a) is being retained because it establishes the minimum requirements for reducing malodors resulting from volatile organic compounds (VOCs).

The revisions to § 123.31(d) excludes certain types of activities from the regulatory requirement. The exclusions include agricultural commodities in their unmanufactured state, private residences, restaurants and materials odorized for safety purposes such as natural gas. In addition, the Department is authorized by paragraph (5) to identify additional sources for exclusion. Section 123.31(e) requires the Department to establish a list of additional sources through a public notice and comment process which provides both the public and the regulated community an opportunity for input. This provision is patterned after the existing requirement in § 127.14 (relating to exemptions) of the Department's regulations.

Under the proposed revisions to the Department's malodor regulations, a complaint from an individual member of the public will result in an investigation by the Department's Air Quality technical staff to determine the source and frequency of the odor complained of. This investigation will include discussions with the owner of the facility at which the source creating odors is located as well as discussion with the complainants. If as a result of this investigation, the Department documents the objectionable odor, the Department will work with the facility owner to identify control technology, improved housekeeping or other strategies to eliminate the objectionable odor. For objectionable odors caused by the emission of VOCs, the reductions achieved through incineration establish the minimum requirements a facility must meet. For objectionable odors resulting from other pollutants, there is no minimum requirement. In all cases, the facility owners responsibility is limited by the best available technology for odors.

This regulatory revision will be submitted to the Environmental Protection Agency as an amendment to the State Implementation Plan.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments.

Benefits

Overall, the citizens of this Commonwealth will benefit from these recommended changes because they streamline the procedures for implementing the Department's air quality program for addressing malodors.

Compliance Costs

These proposed amendments should, in general, reduce compliance costs by streamlining the complaint and investigation process and by establishing a best available technology based compliance requirement.

Compliance Assistance Plan

The Department plans to educate and assist the public and the regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing regional compliance assistance program.

Paperwork Requirements

The regulatory revisions will reduce the paperwork related to complaints and odor investigations.

G. Sunset Review

These proposed amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the amendments effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 12, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department 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 the Department, the Governor and the General Assembly to review these objections before publication of the final-form regulations.

I. *Public Comment and Board Public Hearings*

The Department is specifically requesting comments on three aspects of this proposal:

1. In documenting whether an odor is objectionable, how should the frequency of occurrence and the extent of public objection be evaluated?

2. Should the Department retain its long-standing minimum requirements for malodors resulting from emissions of VOCs?

3. Is the 5-year review period for BAT the appropriate time frame?

Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on the proposed amendments. The hearings will be held at 1 p.m. on the following dates and at the following locations:

September 23, 1997	Department of Environmental Protection 1st Floor Meeting Room Rachel Carson State Office Building 400 Market Street Harrisburg, PA
September 25, 1997	Department of Environmental Protection Southwest Regional Office 500 Waterfront Drive Pittsburgh, PA
September 29, 1997	Upper Merion Township Building 175 West Valley Forge Road King of Prussia, PA

Persons wishing to present testimony at the hearings must contact Kate Coleman at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness and three written copies of the oral testimony must be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearings and require an auxiliary aid, service or other accommodations in order to participate, should contact Kate Coleman at (717) 787-4526 or through the Pennsylvania AT&T relay service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Written Comments

In lieu of or in addition to presenting oral testimony at the hearings, interested persons may submit written comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, 15th Floor Rachel Carson State Office Building, P. O. Box 8477, Harrisburg, PA 17105-8477. Comments received by facsimile will not be accepted. Comments must be received by October 29, 1997. In addition to the written comments, interested persons may also submit a summary of their comments to the Board. This summary may not exceed one page in length and must be received by October 29, 1997. The summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments

Comments may be submitted electronically to the Board at Regcomments@al.dep.state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. Comments submitted electronically must also be received by the Board by October 29, 1997.

JAMES M. SEIF,
Chairperson

(*Editor's Note*: Proposals to amend § 121.1 remain outstanding at 27 Pa.B. 1822, 1829 and 2130 (April 12 and May 3, 1997).)

Fiscal Note: 7-325. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Malodor—An **[odor which causes annoyance or discomfort to the public and which the Department determines to be objectionable to the public] objectionable odor which is first identified by a member of the public and subsequently documented by the Department in the course of an odor investigation to be an objectionable odor.**

* * * * *

***Odor investigation*—An investigation of the source and frequency of odors which may include, but is not limited to, an inspection of a facility, surveillance activities in the area of a facility, affidavits or odor logs.**

* * * * *

CHAPTER 123. STANDARDS FOR CONTAMINANTS

ODOR EMISSIONS

§ 123.31. Limitations.

* * * * *

(c) **Notwithstanding subsections (a) and (b), if a person controls malodorous air contaminants from a source through the use of the best available technology for odors for that source, as determined by the Department, then no additional measures will be required to further reduce residual odors. After 5 years following implementation of the best available technology, if a malodor exists, the Department may require a new determination of and implementation of best available technology for odors.**

(d) The prohibition in subsection (b) does not apply **[to odor emissions arising from the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.] when the odor results from the following:**

(1) The production of agricultural commodities in their unmanufactured state.

(2) Private residences.

(3) Restaurants.

(4) Materials odorized for safety purposes.

(5) Other sources or classes of sources determined to be of minor significance by the Department.

(e) The Department may establish a list of sources or classes of sources meeting the requirements of subsection (d)(5). The Department will publish notice of its intention to establish or modify the list in the *Pennsylvania Bulletin* and will establish a comment period of at least 30 days. After the close of the comment period, the Department will publish the final list or any modifications to the final list in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 97-1350. Filed for public inspection August 22, 1997, 9:00 a.m.]

[25 PA. CODE CHS. 91, 97 AND 101]
Wastewater Management

The Environmental Quality Board (Board) proposes to amend Chapters 91 and 97 (relating to general provisions; and industrial wastes) and delete Chapter 101 (relating to special water pollution regulations). The amendments are proposed as a result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative and Executive Order 1996-1 (Regulatory Review and Promulgation). This proposed rulemaking is intended to meet the goals of these initiatives by correcting identified regulatory deficiencies.

This proposal was adopted by the Board at its meeting of June 17, 1997.

A. *Effective Date*

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

B. *Contact Persons*

For further information contact Milt Lauch, Chief, Division of Wastewater Management, P. O. Box 8465, Rachel Carson State Office Building, Harrisburg, PA 17105-8465, (717)787-8184, or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717)787-7060. Information regarding submitting comments on this proposal appears in Section J of this Preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department's Web site (http://www.dep.state.pa.us).

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of section 5 of The Clean Streams Law (35 P. S. § 691.5) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510.20).

D. *Background and Purpose*

These proposed amendments are intended to support the Department's pollution prevention strategies, eliminate regulations which are more stringent than Federal rules unless justified by a compelling and articulable Commonwealth interest or required by State law, more easily apply new green technologies, eliminate provisions which impose disproportionate economic costs and eliminate obsolete regulations. These changes are likely to affect industries and individuals proposing new or innovative ways to prevent pollution through modifications to waste streams or wastewater processes and those proposing new technologies to treat wastewater by eliminating regulatory barriers to these activities. In addition, the elimination of obsolete regulations will simplify and clarify the existing regulations for those applying for permits for wastewater treatment facilities. The proposed

consolidation of Chapter 101 into Chapter 91 will provide a single source of regulations regarding related wastewater issues. The proposed rulemaking also transfers several sections from Chapter 97 to Chapter 91.

The proposed amendments were reviewed and approved by the Water Subcommittee of the Air and Water Quality Technical Advisory Committee (Committee) on February 20, 1997.

E. *Summary of Regulatory Requirements*

§ 91.1 (relating to definitions)

Section 91.1 proposes new or revised definitions related to the Department's wastewater program intended to clarify previously undefined terms used in the regulations. Terms newly defined include: "application," "facility," "Federal act," "general water quality management permit or general permit," "industrial waste," "notice of intent (NOI)," "National Pollutant Discharge Elimination System (NPDES) permit," "operator," "owner," "person," "pollutant," "schedule of compliance," "sewage," "single residence sewage treatment plant," "stormwater," "wastewater impoundment," "waters of this Commonwealth" and "water quality management permit." The definitions of "Department" and "EPA" are proposed to be deleted since these definitions exist in Chapter 1. Inclusion of the new definitions would provide a single source of uniform definitions directly related to the regulations and program administration.

§ 91.5 (relating to pollution prevention)

Proposed text of this section is currently in § 97.14 (relating to measures to be used) and is proposed to be moved to Chapter 91. The title of the section is changed from "measures to be used" to "pollution prevention" to more clearly define the intent of the section. In addition, the text of this section is proposed to be modified slightly to include additional examples of pollution prevention methods. Existing § 91.5 (relating to interpretation of regulations) is renumbered as § 91.4.

§ 91.11 (relating to compliance conferences)

The title of this section is proposed to be changed from "conferences with violators" to "compliance conferences" to more clearly describe the intent of the conferences held to discuss pollution abatement options. The last sentence of this section was deleted since these conferences may not involve orders issued by the Department.

§ 91.12 (relating to conference procedure)

Subsection (a) contained provisions that prohibited Department employes from recommending specific measures or methods to be used by parties attempting to comply with Department requirements. This section is proposed for deletion because it restricted innovation and hindered the Department's ability to assist persons attempting to comply with Department requirements and was inconsistent with § 91.11. In addition, the term "the staff" would be replaced with "employes of the Department" throughout the section to more clearly define the individuals representing the Department.

§ 91.13 (relating to abatement or treatment required)

This section is proposed for revision to remove the requirement for submission of detailed plans and specifications for the construction of a treatment works as the only alternative to abatement of pollution. Language is added to allow the consideration of pollution prevention measures or other actions as alternatives to construction of facilities.

§ 91.15 (relating to basin-wide compliance)

The title of this section is proposed to be changed from "basin-wide plans" to "basin-wide compliance" to more accurately reflect the intent of achieving basin-wide compliance with water quality objectives. A requirement to submit plans and construct treatment plants concurrently for an entire stream basin is proposed for deletion because it is too prescriptive and impracticable. The term "sources of pollution" is proposed to be changed to "pollutant sources" for clarity and because the term "pollutant" is now defined in § 91.1 (relating to definitions). In addition, a conforming change has been made to § 91.14(a) (relating to time for constructing treatment works).

§ 91.21 (relating to applications for permits)

A minor change to this section is proposed to better define the Department's regional office as the appropriate place to submit permit applications rather than the "regional engineer" which is now an obsolete term. In addition, a subsection has been added which outlines the administrative process to obtain coverage under a proposed General Water Quality Management Permit (see § 91.27 (relating to general water quality management permits).

§ 91.22 (relating to fees)

A new subsection (b) is proposed to provide for fees to be established for the Department's review of notices of intent (NOI) submitted for coverage under a general permit. The provisions would authorize the Department to establish a fee for review of the NOI for each type of general permit through publication of the fees when the general permit is published in the *Pennsylvania Bulletin* as described in proposed § 91.27(b)(1). The existing language of this section would be retained in a new subsection (a).

§ 91.25 (relating to experimental projects)

The proposed amendments would allow field data on experimental projects that have been demonstrated in other states with climatic conditions similar to this Commonwealth to be used as a basis for approval of an innovative treatment process not currently in use in this Commonwealth. This section is intended to remove a current regulatory barrier to the use of innovative technology in this Commonwealth.

§ 91.27 (relating to general water quality management permits)

This new section would give the Department the authority to issue general water quality management permits. These permits would be issued once Statewide for specific classifications of treatment facilities which will treat the same type of wastewater, involve the same type of operations and require the same type of operating conditions. Applicants for coverage under one of these general permits would submit an NOI to the Department. The proposed amendments would provide that, based on the conditions in the general permit under which coverage is being requested, the applicant may be authorized to begin constructing the wastewater treatment facility after waiting for a specific period of time in the general permit, on the date specified in the general permit, upon notification of inclusion by the Department or upon receipt of the application for coverage by the Department. The amendments include the conditions under which the Department may deny coverage under a general permit as well as when existing coverage under a general permit may be revoked, suspended or terminated by the Depart-

ment and an individual water quality management permit required. These provisions are proposed for inclusion in Chapter 91 to improve the level of compliance and provide a reduction in cost and paperwork for both the Department and regulated community for specific classes of treatment facilities while still protecting the environment through specific conditions in each general permit. The proposed procedures are similar to those used to establish and implement NPDES general permits authorizing wastewater discharges.

Standards for Approval

The undesignated center heading would be changed from "Standards for Approval" to "Management of Other Wastes" to more clearly describe the modified and new provisions under this heading.

§ 91.31 (currently relating to "comprehensive water quality management" and proposed to be changed to "wells other than oil and gas")

The current regulation establishes standards for approving projects relative to comprehensive water quality management plans and supports implementation of the policy statement in The Clean Streams Law (35 P. S. §§ 691.1—691.1001) related to establishing a comprehensive program of watershed management and control. This section is obsolete in that it does not reflect current watershed management concepts and practices. The entire section is proposed to be deleted and replaced by provisions currently in § 97.61 (relating to wells other than oil or gas) with a proposal to change the term "polluting wastes" to "pollutant" which is a defined term. In addition, the reference to "1,000 p.p.m." in existing § 97.61(a) is changed to "1,000 nephelometric turbidity units (NTU)." In subsection (c) the word "receptacle" is inserted between the words "or" and "shall" to be consistent with the use of "receptacle" later in the same subsection.

§ 91.32 (currently relating to "private projects" and proposed to be changed to "underground injection of wastes")

The current provisions relating to private projects would be moved to a newly created § 91.37 (relating to private projects).

The Department's regulations relating to underground injection of wastes are currently found in §§ 97.71—97.76. These regulations are more stringent than Federal regulations in that an NPDES Permit is required, but the Federal regulations at 40 CFR 144 (relating to underground injection control program) only require these permits for surface water discharges. The proposed amendments delete §§ 97.71—97.76 and incorporate by reference the Federal regulations in § 91.32. The proposed new provisions provide that any underground injection of waste shall comply with 40 CFR 144 relating to underground injection control.

§ 91.33 (currently relating to "permit requirements" and proposed to be changed to "incidents causing or threatening pollution")

Existing § 91.33 is covered by Federal law and is not related to the new content of Chapter 91. The proposed rulemaking deletes this section from Chapter 91. The Department's regulations relating to incidents causing or threatening pollution are currently found in § 101.2. That section includes provisions related to actions to be taken in the event of an accident or incident causing the release of toxic or other harmful pollutants. It also includes an outdated listing of regional office emergency telephone numbers in § 101.2 (c) and (d). The proposed amendments delete this section, and the provisions of § 101.2 (a), (b) and (e) are moved to § 91.33. Minor changes are proposed to subsection (a) by deleting "or taste and odor producing substances" and changing the word "another" to "any other" in describing the substances covered under these emergency provisions and deleting the word "municipality" in both subsections (a) and (b) since the definition for the word "person" includes municipalities. The Water Subcommittee (Subcommittee) of the Committee recommended the Department change the term "forthwith" (in the original text being transferred) to "as soon as practicable." This section relates to the need to notify the Department of an accident involving a discharge of a toxic substance or other pollutant into waters of this Commonwealth. The Department feels that, because of potential hazards to the environment and public health associated with any delay in notification and the potential for misinterpretation of the phrase "as soon as practicable," the word "immediately" is more appropriate. The provisions which require the reporting of an incident "immediately" are also more stringent than Federal regulations at 40 CFR 122.41 which allow 24 hours for a report. This more stringent requirement has been retained in this proposed rulemaking because it has been proven over many years to prevent hazards to downstream drinking water supplies and other water users and has prevented property damage. The Department feels that the benefits of a quick response outweigh any additional burden placed on the individual to quickly report the incident.

The Subcommittee raised a concern regarding consistency of the phrase "remove from the ground" in § 91.33(b) with the Land Recycling and Environmental Remediation Standards Act (Act 2) (35 P. S. §§ 6026.101—6026.909). The Department has inserted the phrase "this title" between "by" and "the" in the last sentence of the subsection. This change will assure that activities related to removal of pollutants from the ground are conducted in accordance with appropriate Department regulations including regulations promulgated under Act 2.

§ 91.34 (relating to activities utilizing pollutants)

The Department's regulations relating to activities utilizing pollutants are currently found in § 101.3 (relating to activities utilizing polluting substances). That section regulates activities such as impoundments or transportation of polluting substances. The proposed amendments move § 101.3 to new § 91.34. The term "polluting substances" is proposed to be changed to "pollutants" in subsection (a) of the transferred text. In addition, the words "municipalities" and "municipality" were deleted because the definition for the word " person" includes these terms.

§ 91.35 (relating to wastewater impoundments)

The Department's regulations relating to wastewater impoundments are currently found in § 101.4 (relating to impoundments). That section regulates the proper operation, maintenance and use of impoundments used for the production, processing, storage, treatment or disposal of polluting substances. The proposed amendments move § 101.4 to new § 91.35. The title of the section would be changed from "Impoundments" to "Wastewater impoundments" to make it clear that these requirements do not relate to other impounded waters such as ponds, lakes and reservoirs. The word "municipality" has been deleted in subsection (a) and (b) because the definition of "person" includes this term.

§ 91.36 (relating to pollution control and prevention at agricultural operations)

The Department's regulations relating to pollution control and prevention at agricultural operations are currently found in § 101.8. The proposed amendments move the content of § 101.8 to new § 91.36. Minor changes to the existing text are proposed. The term "polluting substances" is proposed to be changed to "pollutants" in subsections (a) and (b) of the transferred text.

The Subcommittee raised a concern that existing § 101.8(b) (§ 91.36(b) of the proposal) be reviewed for potential conflicts with nutrient management regulations in Chapter 83 (relating to State Conservation Commission), published as final at 27 Pa.B. 3161 (June 28, 1997), effective October 1, 1997. To better identify the relationship between these proposed amendments and the nutrient management regulations, the following sentence has been added at the end of § 91.36(b): "Operations which are required to or volunteer to submit nutrient management plans shall comply with Chapter 83." Similar language has been added at the end of subsection (a).

§ 91.37 (relating to private projects)

This section was previously § 91.32. The text of this section has not been modified.

§ 91.38 (relating to algicides, herbicides and fish control chemicals)

Section 101.5 of the current regulations describes an approval process to obtain permission to apply algicides, herbicides or fish control chemicals to sources of public drinking water supply to control algae. An additional provision describes a joint approval given by the Department and the Fish and Boat Commission to control aquatic plants in surface waters using chemicals. The proposed amendments would move § 101.5 to new § 91.38 and revise "Fish Commission" to "Fish and Boat Commission."

§ 101.1 (relating to definitions)

The definitions are proposed to be deleted.

§ 101.6 (relating to protection of Wallenpaupack Lake)

This section of the existing regulations describes special pollution prevention measures to be put in place specifically for Wallenpaupack Lake. These provisions are obsolete. The proposed amendments would delete this section in its entirety.

F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the proposed amendments. It also requires a statement of the need for, and a description of forms, reports or other paperwork required as a result of the proposal.

These proposed amendments to Chapter 91 and 97 and deletion of Chapter 101 are necessary to implement the Department's Regulatory Basics Initiative and the goals of Executive Order 1996-1. The regulatory amendments will result in the promotion of pollution prevention strategies, eliminate regulations which inhibit the application of green technologies and eliminate obsolete regulations or regulations which are more stringent than Federal rules without a compelling and articulable Pennsylvania public interest or required by State law.

Benefits

Individuals, consultants and sewage treatment plant permittees will benefit from the proposed amendments without reductions in protection of public health or the environment. The amendments will allow the Department staff more flexibility to recommend innovative remediation measures to attain compliance. In addition, the proposed provisions regarding pollution prevention will provide new options when considering sewage treatment/operational alternatives to achieve compliance. The amendments to the provisions regarding experimental facilities will allow the use of new innovative technologies to be considered for use in this Commonwealth. Additionally, the elimination of obsolete regulations and the proposal to incorporate appropriate sections of Chapter 101 into Chapter 91, while clarifying some regulatory language, will eliminate confusion among the regulated community as to which regulations are applicable. These changes should result in increased compliance and improve the environment. The cost savings associated with these changes is estimated to be $2,812,500.

Compliance Costs

The proposed amendments to Chapters 91 and 97 and deletion of Chapter 101 do not create new regulatory requirements; rather, they eliminate unnecessary existing requirements, combine related regulations from several different chapters of regulations into one chapter and clarify existing text. The proposed amendments which provide new alternatives for compliance will not impose additional costs on anyone.

Compliance Assistance Plan

The Department does not intend to develop a compliance assistance plan because there is no expected adverse impact on compliance.

Paperwork Requirements

There will be no additional forms, reports or other paperwork that will be required as the result of these proposed amendments.

G. *Pollution Prevention*

In keeping with Governor Ridge's interest in encouraging pollution prevention solutions to environmental problems, these proposed amendments have incorporated the following provisions and incentives to meet that goal:

Regulations currently in § 97.14 (relating to measures to be used) would be transferred to § 91.5. This section would be renamed "pollution prevention" to more clearly identify the intent.

Section 91.13 (relating to abatement or treatment required) would be rewritten to emphasize that pollution prevention is a key factor to be used when options to abate pollution are being considered by a permittee.

Section 91.34 (relating to activities utilizing pollutants) requires persons and municipalities engaged in an activity which includes pollutants to develop a report describing the nature of preventative measures taken to keep these pollutants from the waters of this Commonwealth.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 12, 1997, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a

detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department 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 by the Department, the Governor and the General Assembly before publication of the final-form regulations.

J. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed amendments to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail; Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by September 22, 1997. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by September 22, 1997. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulations will be considered.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@A1.dep.state.pa.us and must also be received by the Board by September 22, 1997. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JAMES M. SEIF,
Chairman

Fiscal Note: 7-323. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 91. GENERAL PROVISIONS

GENERAL

§ 91.1. Definitions.

The definitions set forth in section 1 of the act of June 22, 1937 (P. L. 1987, No. 394) (35 P. S. § 691.1) **[applies] apply** to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

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

[*Department*—The Department of Environmental Resources of the Commonwealth or, where appropriate, the Sanitary Water Board, Environmental Quality Board or Environmental Hearing Board of the Commonwealth.

***EPA*—The United States Environmental Protection Agency.]**

***Facility*—A structure built to collect, convey or treat wastewater which requires coverage under a Water Quality Management Permit.**

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

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

***Industrial waste*—A liquid, gaseous, radioactive, solid or other substance resulting from manufacturing or industry, or from any 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. The term includes all substances whether or not generally characterized as waste. The term does not include sewage.**

***National Pollutant Discharge Elimination System (NPDES) permit*—A permit or equivalent document or requirements issued by the Administrator of the EPA or, when appropriate, by the Department to regulate the discharge of pollutants under section 402 of the Federal act (33 U.S.C.A. § 1342).**

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

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

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

***Person*—An individual, public or private corporation, partnership, association, municipality, political subdivision of the 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 employe thereof, or any other legal entity.**

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

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

***Sewage*—A substance that contains waste products or excrementitious or other discharge from the bodies of human beings or animals.**

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

***Stormwater*—Stormwater runoff, snow melt runoff, and surface runoff and drainage.**

***Wastewater impoundment*—A depression, excavation or facility situated in or upon the ground, whether natural or artificial and whether lined or unlined.**

***Water quality management permit*—A permit or equivalent document or requirements issued by the Department to authorize one of the following:**

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

(ii) A discharge of wastewater to groundwaters of this Commonwealth. This permit is also known as a "Part II" permit.

***Waters of this Commonwealth*—Rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth. The term includes surface waters as defined in Chapter 93 (relating to water quality standards).**

§ 91.6. Pollution prevention.

The pollutant loading of wastes should be reduced to the maximum extent practical by process changes, materials substitution, segregation of strong wastes, reduction in volume of water use, recycling and reuse of water, and by general measures of "good housekeeping" within the plant or facility. The term "practical" is not limited to that which is profitable or economical.

ADMINISTRATION AND ENFORCEMENT

§ 91.11. **[Conferences] Compliance conferences [with violators].**

(a) The Department will confer with the representatives of organizations required to abate their pollution of the waters of this Commonwealth and offer advice and suggestions regarding possible means for the abatement, **[or]** treatment **or prevention** of the pollution in question. **[The staff shall interpret the orders of the Department.]**

* * * * *

§ 91.12. Conference procedure.

[(a) The staff may not select or recommend specific measures or methods to be adopted by the party attempting to comply with the requirements of the Department.

(b)] (a) [The staff] Employes of the Department may not act as **[a]** consulting **[engineer] engineers** for a party or recommend the employment of a particular consultant, gather the data for the design of his treatment plant, prepare plans or act as an inspector on the construction of the project.

[(c)] (b) [The Department and the staff] Employes of the Department will not guarantee directly or by implication the efficacy of a proposed method of pollution abatement.

[(d)] (c) [The staff] Employes of the Department shall exercise their best judgment in assisting the party and his engineers, but the responsibility for abating pollution shall rest entirely upon the one causing the pollution.

§ 91.13. Abatement or treatment required.

The Department will require either abatement of the pollution or the submission of a **[report with detailed construction plans and specifications for a proposed treatment works] plan and schedule for bringing the source's pollutants into compliance through pollution prevention measures, treatment or other means** by a specific date, and shall require progress reports thereon, usually at monthly or bimonthly intervals as the Department will deem appropriate.

§ 91.14. Time for constructing treatment works.

(a) If, in lieu of abatement, a notified party elects to provide waste treatment works and submits plans therefor, the Department, upon approving the plans, will set a time within which the treatment works shall be constructed and placed in operation or will notify the party to be prepared to construct the plant upon notice from the Department, depending upon the status of the Department's program of construction for the basin in which the receiving stream lies as specified in § 91.15 (relating to basin-wide **[plans] compliance).**

* * * * *

§ 91.15. Basin-wide [plans] compliance.

(a) In general, the Department will require **[submission of plans and construction of plants concurrently for a whole stream basin] sources of pollutants in a basin, wastershed or surface waters as defined in Chapter 93 (relating to water quality standards) to concurrently comply with the water quality standards and protection levels set forth in Chapter 93 and Chapters 16 and 95 (relating to water quality toxics management strategy; and treatment requirements).**

(b) **[If] Notwithstanding subsection (a), if** certain sources of **[pollution] pollutants** especially affect the public interests**, [however,]** the Department may act to require the abatement of the sources of pollution individually in the general order of degree of adverse effect upon the public interest.

* * * * *

APPLICATIONS AND PERMITS

§ 91.21. Applications for permits.

* * * * *

(c) Applications and their accompanying papers shall be submitted to the **[Department through the regional engineer in whose region] Department's regional office covering the area where** the project will be located.

(d) To qualify for coverage under a general water quality management permit under this chapter, an administratively complete notice of intent (NOI) shall be submitted to and approved by the Department in accordance with § 91.27 (relating to general water quality management permit).

§ 91.22. Fees.

(a) * * *

(b) A notice of intent (NOI) for coverage under a general water quality management permit shall be accompanied by a check payable to the "Commonwealth of Pennsylvania," in the amount no greater than $500 as set forth in the public notice for the general water quality management permit as described in § 91.27(b)(1) (relating to general water quality management permit).

§ 91.25. Experimental projects.

If the suitability of a proposed device or method of treatment has not been demonstrated by actual field use **in this Commonwealth or another state with similar climatic conditions,** only conditional approval will be given to it until such time as the effectiveness of the device or treatment has been demonstrated to the satisfaction of the Department by ample field experience.

§ 91.27. General water quality management permit.

(a) *Coverage and purpose.* The Department may issue a general water quality management permit, in lieu of issuing individual water quality management permits, for a specific category of wastewater treatment facilities if the wastewater treatment facilities meet the following:

(1) Involve the same, or substantially similar, type of operations.

(2) Treat the same types of wastes.

(3) Require the same operating conditions.

(4) Are, in the judgment of the Department, more appropriately managed under a general permit than under individual permits.

(b) *Administration of general permits*

(1) *Proposed general permits and amendments.* The Department will publish a notice in the *Pennsylvania Bulletin* of its intent to issue or amend a general permit, including the text of the proposed general permit or amendment, proposed review fees and an opportunity for interested persons to provide written comments on the proposed general permit or amendment in accordance with § 91.16 (relating to notification of actions).

(2) *Issuance of general permits.* General permits, subsequently issued, will be published in the *Pennsylvania Bulletin* and include the effective date of the general permit and review fees.

(3) *Effective date of a general permit.* The Department will specify in the general permit that an applicant who has submitted a timely and complete notice of intent for coverage is authorized to construct, erect and locate a wastewater treatment facility or discharge to groundwaters of this Commonwealth, in accordance with the terms and conditions of the general permit coverage. The general permit shall commence according to one of the following:

(i) After a waiting period specified in the general permit.

(ii) On a date specified in the general permit.

(iii) Upon receipt of notification of coverage by the Department.

(iv) Upon receipt of the notice of intent by the Department.

(4) *Coverage under a general permit.* A person who desires to have a wastewater treatment facility covered under a general permit shall submit a notice of intent to the Department in accordance with §§ 91.21 and 91.22 (relating to applications for permits; and fees) and the written instructions of the notice of intent. The Department will review the information provided in the notice of intent to determine if the wastewater treatment facility qualifies under the provisions of the general permit except as provided in subsection (c)(1), (2) or (4).

(c) *Denial of coverage.* The Department may deny coverage under the general permit when one or more of the following conditions exist:

(1) The NOI is not complete or timely.

(2) The applicant has not first obtained NPDES permits required by Chapter 92 (relating to national pollutant discharge elimination system).

(3) The applicant is not, or will not be, in compliance with one or more of the conditions of the general permit or has a significant history of noncompliance with a prior permit issued by the Department.

(4) The treatment facility proposed for coverage under the general permit is not capable of treating wastewater to a degree which will result in compliance with applicable effluent limitations and water quality standards as described in Chapter 93 (relating to water quality standards).

(5) The Department determines that the action is necessary to ensure compliance with the Federal act, the act or this title.

(d) *Requiring an individual permit.* The Department may revoke, or suspend coverage under a general water quality management permit, and require that an individual water quality management permit be obtained when the permittee has violated one or more of the conditions of the general permit or has violated a provision of this title. Upon notification by the Department that an individual water quality management permit is required for the facility, the owner shall submit a complete water quality management permit application, in conformance with the requirements of this chapter, within 90 days of receipt of the notification, unless the owner is already in possession of a valid individual water quality management permit for the applicable functions. Failure to submit the application within 90 days shall result in automatic termination of coverage under the general permit. Timely submission of a complete application shall result in continuation of coverage of the applicable facilities under the general permit, when the facility demonstrates that it has undertaken efforts to address the reasons for the revocation or suspension of coverage, until the Department takes final action on the pending individual permit application.

(e) *Termination of general permit.* When an individual water quality management permit is issued for a facility which is covered under a general water quality management permit, the applicability of the general permit to that facility is automatically terminated on the effective date of the individual permit.

[STANDARDS FOR APPROVAL] MANAGEMENT OF OTHER WASTES

§ 91.31. [Comprehensive water quality management.] Wells other than oil and gas.

[(a) The Department will not approve a project requiring the approval under the act or the provisions of this article unless the project is included in and conforms with a comprehensive program of water quality management and pollution control provided, however, that the Department may approve a project which is not included in a comprehensive program of water quality management and pollution control if the Department finds that the project is necessary and appropriate to abate existing pollution or health hazards and that the project will not preclude the development or implementation of the comprehensive program.

(b) The determination of whether a project is included in and conforms to a comprehensive program of water quality management and pollution control shall be based on the following standards:

(1) Appropriate comprehensive water quality management plans approved by the Department.

(2) Official Plans for Sewage Systems which are required by Chapter 71 (relating to administration of sewage facilities planning program).

(3) In cases where a comprehensive program of water quality management and pollution control is inadequate or nonexistent and a project is necessary to abate existing pollution or health hazards, the best mix of all the following:

(i) Expeditious action to abate pollution and health hazards.

(ii) Consistency with long-range development.

(iii) Economy should be considered in the evaluation of alternatives and in justifying proposals.

(c) In making determinations under the provisions of subsection (b)(3), the Department will consider available and relevant information including, but not limited to, applicable studies and plans prepared by the following:

(1) The applicant.

(2) The Department.

(3) Federal agencies.

(4) Approved planning agencies.

(5) Political subdivisions.]

(a) Each well-drilling operation shall have a sump or other receptacle large enough to receive all drill cuttings, sand bailings, water having a turbidity in excess of 1,000 nephelometric turbidity units (NTU) or other pollutant resulting from the well drilling operations.

(b) Surface water shall be excluded from the sump or receptacle by means of diversion ditches on the uphill sides, or by other appropriate measures.

(c) After completion of the well, the sump or receptacle shall be covered over or otherwise protected or the contents of the receptacle disposed of, so that the contents will not be washed into the waters of this Commonwealth.

(d) Waste oil, coal, spent materials or other pollutants shall be disposed of so that they will not be washed into the waters of this Commonwealth.

§ 91.32. [Private projects] Underground injection of wastes.

[(a) The Department will look with disfavor upon applications for sewerage permits for private sewerage projects to be located within the built-up parts of cities, boroughs and first and second class townships.

(b) Generally, issuance of the sewerage permits will be limited to proper private sewerage projects located in the rural parts of first and second class townships, and for which areas there appears to be no present necessity for public sewerage.]

Underground injection of waste shall comply with 40 CFR Part 144 (relating to underground injection control program).]

§ 91.33. [Permit requirements] Incidents causing or threatening pollution.

[A permit may not be required for the discharge of sewage or industrial wastes into a sewer, sewer system or treatment plant which has been approved by a permit from the Department, provided that the sewer, sewer system or treatment plant is capable of conveying and treating the discharge and is operated and maintained in accordance with the permit and applicable orders, rules and regulations.]

(a) If, because of an accident or other activity or incident, a toxic substance or another substance which would endanger downstream users of the waters of this Commonwealth, would otherwise result in pollution or create a danger of pollution of the waters, or would damage property, is discharged into these waters—including sewers, drains, ditches or other channels of conveyance into the waters—or is placed so that it might discharge, flow, be washed or fall into them, it shall be the responsibility of the person at the time in charge of the substance or owning or in possession of the premises, facility, vehicle or vessel from or on which the substance is discharged or placed to immediately notify the Department by telephone of the location and nature of the danger and, if reasonably possible to do so, to notify known downstream users of the waters.

(b) In addition to the notices set forth in subsection (a), a person shall immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution and, in addition thereto, within 15 days from the incident, shall remove from the ground and from the affected waters of this Commonwealth to the extent re-

quired by this title the residual substances contained thereon or therein.

(c) Compliance with this section does not affect the civil or criminal liability to which the person or municipality may be subject as a result of an activity or incident under the act, 30 Pa.C.S. §§ 101—7314 (relating to the Fish and Boat Code) or another statute, ordinance or regulation.

§ 91.34. Activities utilizing pollutants.

(a) Persons engaged in an activity which includes the impoundment, production, processing, transportation, storage, use, application or disposal of pollutants shall take necessary measures to prevent the substances from directly or indirectly reaching waters of this Commonwealth, through accident, carelessness, maliciousness, hazards of weather or from another cause.

(b) Upon notice from the Department and within the time specified in the notice, the person shall submit to the Department a report or plan setting forth the nature of the activity, the nature of the preventative measures taken to comply with subsection (a) and other information the Department may require.

§ 91.35. Wastewater impoundments

(a) Except as otherwise provided under subsections (c) and (d), a person may not operate, maintain or use or permit the operation, maintenance or use of a wastewater impoundment for the production, processing, storage, treatment or disposal of pollutants unless the wastewater impoundment is structurally sound, impermeable, protected from unauthorized acts of third parties, and is maintained so that a freeboard of at least 2 feet remains at all times. The person owning, operating or possessing a wastewater impoundment shall have the burden of satisfying the Department that the wastewater impoundment complies with these requirements.

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

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

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

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

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

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

(d) This section does not apply to residual waste processing, disposal, treatment, collection, storage or transportation.

§ 91.36. Pollution control and prevention at agricultural operations.

(a) *Animal manure storage facilities.* Animal manure storage facilities do not require a permit from the Department if the design and operation of the storage facilities are in accordance with the Department approved manure management practices as described in the publication entitled "manure management for environmental protection" and addenda or amendments thereto prepared by the Department. If a person chooses to design or construct manure storage facilities using criteria other than those described in "manure management for environmental protection" and addenda or amendments thereto prepared by the Department, approval of the Department or a permit under § 91.35 (relating to wastewater impoundments) will be required. Operations which are required to or volunteer to submit nutrient management plans shall comply with the nutrient management regulations in Chapter 83 (relating to State Conservation Commission).

(b) *Land application of animal manure.* The land application of animal manures do not require a permit from the Department if the design and operation of the land application system are in accordance with the Department approved manure management practices as described in the publication entitled "Manure Management for Environmental Protection" and addenda or amendments thereto prepared by the Department. If a person chooses to design or construct a land application system using criteria other than those described in "Manure Management for Environmental Protection" and addenda or amendments thereto prepared by the Department, approval of the Department or a permit will be required. Operations which are required to or volunteer to submit nutrient management plans shall comply with Chapter 83.

§ 91.37. Private projects.

(a) The Department will look with disfavor upon applications for sewerage permits for private sewerage projects to be located within the built-up parts of cities, boroughs and first and second-class townships.

(b) Generally, issuance of the sewerage permits will be limited to proper private sewerage projects located in the rural parts of first and second class townships, and for which areas there appears to be no present necessity for public sewerage.

§ 91.38. Algicides, herbicides and fish control chemicals.

Except where the use of an algicide, herbicide or fish control chemical would be in violation of a specific order or permit, the use is authorized only in the following instances:

(1) Copper sulfate required to control algae in a source of public water supply where the use is under and in accordance with approval given by the Department.

(2) Chemicals required to control aquatic plants in surface waters and chemicals required for the management of fish populations where the use is under and in accordance with joint approval given by the Department and the Fish and Boat Commission.

CHAPTER 97. INDUSTRIAL WASTES

(*Editor's Note*: The Department is proposing to delete §§ 97.14, 97.61 and 97.71—97.76 as they currently appear in the *Pennsylvania Code* at pages 97-5, 97-10, 97-11 and 97-14—97.16 (serial pps. (139009), (139014), (139015) and (126050)—(126052)).)

§ 97.14. (Reserved)

§ 97.61. (Reserved)

§§ 97.71—97.76. (Reserved)

(*Editor's Note*: The Department is proposing to delete Chapter 101 as it currently appears in the *Pennsylvania Code* at pages 101-1—101-7 (serial pps. (194071)—(194074) and (170117)—(170119)).)

CHAPTER 101. (Reserved)

§§ 101.1—101.6. (Reserved)

§ 101.8. (Reserved)

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