

# PENNSYLVANIA BULLETIN

Volume 29

Number 18

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Hazardous Waste

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

**No. 294, May 1999**

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**PENNSYLVANIA**



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

## ***Pennsylvania Bulletin***

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

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

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

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

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

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

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

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

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

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

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

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

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

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

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### Printing Format

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

### Fiscal Notes

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

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

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# List of Pa. Code Chapters Affected

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# PENNSYLVANIA BULLETIN

Volume 29

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## **Part II**

This part contains the  
Environmental Quality Board's  
Hazardous Waste

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# THE COURTS

## Title 225—RULES OF EVIDENCE

Comment

\* \* \* \* \*

[225 PA. CODE ARTICLES I and VI]

### Proposed Amendments to General Provisions; and Witnesses

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the revision of the Comments to Rules of Evidence 103, 104, and 601. These Comment revisions are being proposed to alert the bench and bar to the per se rule created by the Supreme Court in *Commonwealth v. Washington* that child witness competency hearings are to be conducted outside the hearing of the jury. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed Comment revisions precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel: Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Committee on Rules of Evidence, 5035 Ritter Road, Mechanicsburg, PA 17055, no later than Tuesday, June 1, 1999.

THOMAS C. RAUP,  
*Chair*

#### Annex A

#### TITLE 225. RULES OF EVIDENCE

#### ARTICLE I. GENERAL PROVISIONS

#### Rule 103. Rulings on Evidence.

\* \* \* \* \*

#### Comment

\* \* \* \* \*

Paragraphs 103(b) and (c) are identical to F.R.E. 103(b) and (c) and are consistent with Pennsylvania practice.

**Pa.R.E. 104(c) addresses hearings on preliminary questions outside the presence of the jury.**

\* \* \* \* \*

**Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.**

\* \* \* \* \*

#### Committee Explanatory Reports:

Report explaining the proposed revision of the Comment adding a cross-reference to Pa.R.E. 104 published at 29 Pa.B. 2263 (May 1, 1999).

#### Rule 104. Preliminary Questions.

\* \* \* \* \*

The second sentence of paragraph 104(c) is identical to the second sentence of F.R.E. 104(c). Paragraph 104(c) indicates that hearings on other preliminary matters, both criminal and civil, shall be conducted outside the jury's presence when required by the interests of justice. Certainly, the court should conduct the hearing outside the presence of the jury when the court believes that it is necessary to prevent the jury from hearing prejudicial information. **See *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998) (creating per se rule requiring the trial judge to conduct child witness competency hearings outside the presence of the jury).** The right of an accused to have his or her testimony on a preliminary matter taken outside the presence of the jury does not appear to have been discussed in Pennsylvania law.

Paragraph 104(d) is identical to F.R.E. 104(d). In general, when a party offers himself or herself as a witness, the party may be questioned on all relevant matters in the case. See *Agate v. Dunleavy*, 398 Pa. 26, 156 A.2d 530 (1959). Under Pa.R.E. 104(d), however, when the accused in a criminal case testifies only with regard to a preliminary matter; he or she may not be cross-examined as to other matters. Although there is no Pennsylvania authority on this point, it appears that this rule is consistent with Pennsylvania practice. This approach is consistent with paragraph 104(c) in that it is designed to preserve the defendant's right not to testify generally in the case.

\* \* \* \* \*

**Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.**

#### Committee Explanatory Reports:

Report explaining the proposed revision of the Comment adding a citation to *Commonwealth v. Washington*, published at 29 Pa.B. 2263 (May 1, 1999).

#### ARTICLE VI. WITNESSES

#### Rule 601. Competency.

#### Comment

\* \* \* \* \*

Pa.R.E. 601(a) is consistent with Pennsylvania statutory law. 42 Pa.C.S. [A.] §§ 5911 and 5921 provide that all witnesses are competent except as otherwise provided. Pennsylvania statutory law provides several instances in which witnesses are incompetent. See, e.g., 42 Pa.C.S. [A.] § 5922 (persons convicted in a Pennsylvania court of perjury incompetent in civil cases); 42 Pa.C.S. [A.] § 5924 (spouses incompetent to testify against each other in civil cases with certain exceptions set out in 42 Pa.C.S. [A.] §§ 5925, 5926 and 5927); 42 Pa.C.S. [A.] §§ 5930—5933 and 20 Pa.C.S. [A.] § 2209 ("Dead Man's statutes").

\* \* \* \* \*

**See Pa.R.E. 104(c) which provides that certain hearings on preliminary questions, including com-**

petency, are to be conducted outside the presence of the jury.

**Official Note:** Adopted May 8, 1998, effective October 8, 1998; Comment revised \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.

**Committee Explanatory Reports:**

**Report explaining the proposed revision of the Comment adding a cross-reference to Pa.R.E. 104 published at 29 Pa.B. 2263 (May 1, 1999).**

**Report**

*Proposed Revision of the Comments to Pa.Rs.E. 103, 104, and 601*

*HEARINGS OUTSIDE THE PRESENCE OF JURY;  
COMPETENCY*

The Committee is proposing the revision of the Comments to Rules of Evidence 103 (Rulings on Evidence), 104 (Preliminary Questions), and 601 (Competency). These revisions highlight the necessity of conducting certain hearings on preliminary questions, in particular competency questions, outside the hearing of the jury.

Since the Rules of Evidence became effective in October 1998, the Committee has been monitoring the new rules in practice, and the continuing development of evidence law in Pennsylvania. One recent case that the Committee has considered is *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998), a case addressing the competency of a child witness to testify. The Court created a per se rule requiring that competency hearings are to be conducted outside the presence of the jury.

After reviewing *Washington, supra*, and the rules, the Committee agreed that the per se rule created by the Court falls within the parameters of Rule 104(c), which requires hearings on preliminary matters to be conducted outside the hearing of the jury "when the interests of justice require," and therefore a rule change is not necessary. The Committee majority also agreed that, as an aid to the bench and bar, this important procedural change in evidence law should be referenced in the Rule 104 Comment. We, therefore, are proposing to add the following provision to the sixth paragraph of the Rule 104 Comment:

See *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998) (creating per se rule requiring the trial judge to conduct child witness competency hearings outside the presence of the jury).

The Committee is also proposing correlative revisions of the Comments to Rules 103 and 601 that would include cross-references Rule 104(c) with regard to hearings on preliminary matters, and whether the hearing should be held in the presence of the jury. The Rule 103 Comment would be revised by adding the following language as the fourth paragraph;

Paragraph (c) of Pa.R.E. 104 addresses hearings on preliminary questions outside the presence of the jury.

Similarly, the Rule 601 Comment would be revised by adding the following language as the last paragraph;

See Pa.R.E. 104(c) which provides that certain hearings on preliminary questions, including competency, are to be conducted outside the presence of the jury.

[Pa.B. Doc. No. 99-690. Filed for public inspection April 30, 1999, 9:00 a.m.]

[225 PA. CODE ARTICLE IV]

**Proposed Amendment to Rule 408 Compromise and Offers to Compromise**

**Introduction**

The Committee on the Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania amend Rule 408 (Compromise and Offers to Compromise). This proposal would make it clear that evidence of conduct or statements made in compromise negotiations is not admissible to prove liability for or validity of a claim or its amount. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Committee on the Rules of Evidence, 5035 Ritter Road, Mechanicsburg, PA 17055 no later than Wednesday, June 2, 1999.

THOMAS C. RAUP,  
*Chair*

**Annex A**

**TITLE 225. RULES OF EVIDENCE**

**ARTICLE IV. RELEVANCY AND ITS LIMITS**

**Rule 408. Compromise and Offers to Compromise.**

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. **Evidence of conduct or statements made in compromise negotiations is likewise not admissible.** This rule does not require the exclusion of [ **an admission of fact** ] any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, [ **negating** ] **negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.**

**Comment**

This rule is [ **similar** ] identical to F.R.E. 408. [ **Contrary to its federal counterpart, however, Pa.R.E. 408 does not bar the use of all statements and conduct occurring during settlement negotiations. In this respect, the rule is consistent with Pennsylvania law that distinct admissions of fact made during settlement discussions are admissible. See *Rochester Machine Corp. v. Mulach Steel Corp.*, 498 Pa. 545, 449 A.2d 1366 (1982)(plurality); *Heyman v. Hanauer*, 302 Pa. 56, 152 A. 910 (1930); *Hammel v. Christian*, 416 Pa. Super. 78, 610 A.2d 979 (1992). ]**

The 1999 amendments abolish the common law rule that distinct admissions of fact made during settlement discussions are admissible, see *Rochester Marine Corp. v. Mulach Steel Corp.*, 498 Pa. 545, 449 A.2d 1366 (1982)(plurality), bringing Pennsylvania in line with F.R.E. 408 and the majority of states.

The 1999 amendments are consistent with the Mediation Act of 1996. See 42 Pa.C.S. § 5949 (Confidential mediation communications and documents).

\* \* \* \* \*

Pa.R.E. 408 is consistent with 42 Pa.C.S. [A.] § 6141 which provides, in pertinent part, as follows:

\* \* \* \* \*

See *Hatfield v. Continental Imports, Inc.*, 530 Pa. 551, 610 A.2d 446 (1992)(evidence of "Mary Carter" agreement admissible to show bias or prejudice, and not excluded by § 6141(c)).

\* \* \* \* \*

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended \_\_\_\_\_, 1999; effective \_\_\_\_\_, 1999.

**Committee Explanatory Reports:**

Report explaining the proposed amendments concerning the inadmissibility of evidence of conduct or statements made in compromise negotiations published at 29 Pa.B. 2263 (May 1, 1999).

**Report**

*Proposed Amendments to Pa.R.E. 408*

*ADMISSIBILITY OF CONDUCT OR STATEMENTS MADE IN COMPROMISE NEGOTIATIONS*

The Committee is proposing that Rule 408 (Compromise and Offers to Compromise) be amended to abolish the common law rule by making it clear that evidence of conduct or statements made in compromise negotiations is not admissible to prove liability for or the validity of a claim or its amount.

The Committee undertook a review of this rule after receiving correspondence that contended that Rule 408 is a "trap for the unwary" because it inhibits talking freely in order to promote settlement, and promotes malpractice actions against lawyers who make damaging statements because they do not say, "Hypothetically speaking" prior to any compromise discussions. The correspondents suggested that Rule 408 be amended to parallel the federal rules, F.R.E. 408 and the other states that have similar rules or statutes.<sup>1</sup>

As the Committee evaluated the points raised in the correspondence, the members noted two other considerations. First, the Mediation Act, which was passed in 1996 after the ad hoc Committee on the Rules of Evidence had completed its work on Rule 408, provides that, "Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding..." Although the Mediation Act provisions abrogate the common law rule, the experience of the members of the Committee has been that the provisions are logical and work well. Furthermore, the Committee

<sup>1</sup>The Committee examined the rules and statutes in several other jurisdictions and found that Pennsylvania is the only state that continues to follow this common law principle.

noted that most states have a Mediation Act, and several of them have included provisions in their rules or statutes concerning the inadmissibility of evidence of mediation or statements made during mediation.

Second, the Committee noted that there are many situations in which an attorney will agree with opposing counsel to conduct settlement negotiations under the Federal Rules, thereby circumventing the common law and alleviating the necessity to state "Hypothetically speaking" prior to any and all settlement discussions.

Based on the foregoing considerations, the Committee agreed that Pennsylvania evidence law should be brought in line with F.R.E. 408 by amending Pa.R.E. 408 to change Pennsylvania's adherence to the common law, and make it clear that evidence of conduct or statements made in compromise negotiations is not admissible to prove liability for or invalidity of a claim or its amount. The Committee is also proposing correlative revisions to the Comment.

[Pa.B. Doc. No. 99-691. Filed for public inspection April 30, 1999, 9:00 a.m.]

[225 PA. CODE ARTICLE VI]

Proposed Amendment to Rule 613 Prior Statements of Witnesses

**Introduction**

The Committee on Rules of Evidence is planning to recommend that the Supreme Court amend Rule 613 (Prior Statements of Witnesses) by including "inconsistent" in the title and text of section (a). This proposal would make it clear that both sections (a) and (b) apply to attacks on credibility through prior inconsistencies. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report. Deletions are in bold and brackets, and additions are in bold and underlined.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Committee on Rules of Evidence, 5035 Ritter Road, Suite 800, Mechanicsburg, PA 17055 no later than Wednesday, June 2, 1999.

THOMAS C. RAUP,  
*Chair*

**Annex A**

**TITLE 225. RULES OF EVIDENCE**

**ARTICLE VI. WITNESSES**

**Rule 613. Prior Statements of Witnesses.**

(a) *Examining Witness Concerning Prior Inconsistent Statement.* A witness may be examined concerning a prior

**inconsistent** statement made by the witness, whether written or not, and the statement need not be shown or its contents disclosed to the witness at that time, but on request the statement or contents shall be shown or disclosed to opposing counsel.

\* \* \* \* \*

**Comment**

\* \* \* \* \*

*Section (a).* This section of the Rule is [ **identical to** ] **basically the same as F.R.E. 613(a), except that the word "inconsistent" does not appear in the Federal Rule. Its inclusion makes clear that both sections (a) and (b) involve attacks on credibility through prior inconsistencies. It has been suggested that its omission from the Federal Rule was a "drafting oversight." Charles A. Wright & Victor J. Gold, *Federal Practice & Procedure* § 6203, n. 13 (1993); J. Weinstein, 3 *Weinstein's Evidence* § 613.021, n. 1 (1991).** By dispensing with the need to show the prior statement or disclose its contents to the witness before proceeding with examination about it, section (a) repudiates the decision in the *Queen's Case*, 129 Eng. Rep. 9761 (1820). Pa.R.E. 613(a) resolves the ambiguity in the scant Pennsylvania authority on this point. Compare *Kann v. Bennett*, 223 Pa. 36, 72 A. 342 (1909) (before witness may be cross-examined about prior inconsistent statement, witness must be shown the statement and asked if he wrote it) with *Commonwealth v. Petrakovich*, 459 Pa. 511, 329 A.2d 844 (1974) (overlooking *Kann* case, court stated it had never considered question of showing statement to witness, and found no need to resolve question under facts of case).

\* \* \* \* \*

**Official Note: Adopted May 1, 1998, effective October 1, 1998; amended \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.**

***Committee Explanatory Reports:***

**Report explaining the proposed amendments adding "inconsistent" to paragraph (a) published at 29 Pa.B. 2265 (May 1, 1999).**

**Report**

*Proposed Amendments to Pa.R.E. 613*

*Impeachment of Witness Using Prior Inconsistent Statement*

The Committee is proposing that Rule 613 (Prior Statements of Witnesses) be amended to clarify that section (a) applies to prior inconsistent statements by adding the term "inconsistent" to the title and text of section (a).

As part of its ongoing review of the Rules of Evidence, and in response to some correspondence, the Committee has reexamined Rule 613, and agreed with the correspondence that by using "prior statements," section (a) could be subject to misconstruction about its application to both consistent and inconsistent statements. Since section (a) was modeled on F.R.E. 613(a), we researched the history of the federal rule, and found that authorities agree that 1) the omission of the term "inconsistent" in F.R.E. 613(a) is inadvertent, and 2) F.R.E. 613(a) is intended to apply only to inconsistent statements. See *Charles A. Wright & Victor J. Gold, Federal Practice & Procedure* § 6203, n.13 (1993) and J. Weinstein, 3 *Weinstein & Berger, Weinstein's Evidence* § 613[01], n. 1 (1991). We agreed, therefore, that it would be helpful to members of the

bench and bar to clarify that Pa.R.E. 613(a) applies only to inconsistent statements by adding the term "inconsistent" to the title and text of section (a). The Committee is also proposing correlative revisions to the Comment.

[Pa.B. Doc. No. 99-692. Filed for public inspection April 30, 1999, 9:00 a.m.]

**[225 PA. CODE ARTICLE VIII]**

**Proposed Amendment of Rule 803.1, Hearsay Exceptions; Testimony of Declarant Necessary**

**Introduction**

The Committee on Rules of Evidence is planning to recommend that the Supreme Court of Pennsylvania approve the revision of the Comment to Rule of Evidence 803.1. This Comment revision updates the subsection (1) Comment consistent with recent changes in the case law concerning the admission of prior inconsistent statements. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory *Reports*.

The text of the proposed Comment revision precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel; Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Committee on Rules of Evidence, 5035 Ritter Road, Mechanicsburg, PA 17055, no later than Tuesday, June 1, 1999.

THOMAS C. RAUP,  
*Chair*

**Annex A**

**TITLE 225. RULES OF EVIDENCE**

**ARTICLE VIII. HEARSAY**

**Rule 803.1. Hearsay Exceptions; Testimony of Declarant Necessary.**

The following statements, as hereinafter defined, are not excluded by the hearsay rule if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement:

\* \* \* \* \*

(1) *Inconsistent Statement of Witness.* A statement by a declarant that is inconsistent with the declarant's testimony, and (a) was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) is a writing signed and adopted by the declarant, or (c) is a verbatim contemporaneous recording of an oral statement.

**Comment**

Subsection (a) is similar to F.R.E. 801(d)(1)(A), except that **the Pennsylvania rule classifies those kinds of**

inconsistent statements that are described therein as exceptions to the hearsay rule, not exceptions to the definition of hearsay. Subsections (b) and (c) are an expansion of the exception [ as defined ] that is described in the federal rule.

Pa.R.E. 803.1(1) is consistent with prior Pennsylvania case law. See *Commonwealth v. Brady*, 510 Pa. 123, 507 A.2d 66 (1986) (seminal case that overruled close to two centuries of decisional law in Pennsylvania and held that the recorded statement of a witness to a murder, inconsistent with her testimony at trial, was properly admitted as substantive evidence, excepted to the hearsay rule); [ *Commonwealth v. Halstead*, 542 Pa. 318, 666 A.2d 655 (1995); ] *Commonwealth v. Lively*, 530 Pa. 464, 610 A.2d 7 (1992). To qualify as a "verbatim contemporaneous recording of an oral statement," the "recording" must be an electronic, audiotaped, or videotaped recording. See *Commonwealth v. Wilson*, 707 A.2d 1114 (1998). Inconsistent statements of a witness that do not qualify as exceptions to the hearsay rule may still be introduced to impeach the credibility of the witness. See Pa.R.E. 613.

\* \* \* \* \*

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; Comment revised \_\_\_\_\_, 1999, effective \_\_\_\_\_, 1999.

**Committee Explanatory Reports:**

Report explaining the proposed revision of the Comment to subsection (1) published at 29 Pa.B. 2266 (May 1, 1999).

**Report**

**Proposed Revision of the Comment to Pa.R.E. 803.1**

*PRIOR INCONSISTENT STATEMENTS*

The Committee is proposing the revision of the Comment to Rule 803.1 (Hearsay Exceptions; Testimony of Declarant Necessary). This revision updates the Comment to subsection (1) by deleting the citation to *Commonwealth v. Halsted*, 542 Pa. 318, 666 A.2d 655 (1995), and replacing it with a citation to *Commonwealth v. Wilson*, 707 A.2d 1114 (Pa. 1998). In *Wilson*, the Supreme Court clarifies what statements qualify as a "verbatim contemporaneous recording of an oral statement," within the context of subparagraph (1)(c).

In addition to adding the *Wilson* citation, the Committee is revising the entire subsection (1) Comment to provide a clearer, more informative explanation of the evolution of Pennsylvania's law concerning the admission of prior inconsistent statements as substantive evidence. The revision includes a citation to *Commonwealth v. Brady*, 510 Pa. 123, 507 A.2d 66 (1986), which is the seminal case that held that it was proper to admit as substantive evidence a prior recorded statement of a witness that was inconsistent with the witness's testimony at trial.

Finally, the Comment revision includes a cross-reference to Pa.R.E. 613 (Prior Statements of Witnesses) concerning the use of an inconsistent statement to impeach the credibility of a witness.

[Pa.B. Doc. No. 99-693. Filed for public inspection April 30, 1999, 9:00 a.m.]

# Title 231—RULES OF CIVIL PROCEDURE

## PART I. GENERAL

[231 PA. CODE CHS. 100, 200, 1000 AND 1300]

Technical Amendment of Rules 76—1361; No. 310, Doc. No. 5

### Order

*Per Curiam:*

And Now, this 12th day of April, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

Rules 76, 102, 201, 206.5, 206.6, 210, 211, 213, 216, 217, 222, 224, 227.2, 227.3, 229, 230, 230.1, 234.6, 234.9, 237, 237.1, 237.6, 239, 240, 249, 1002, 1006, 1007.1, 1019, 1021, 1024, 1031, 1037, 1038, 1054, 1065, 1066, 1073.1, 1075.1, 1075.2, 1075.3, 1075.4, 1076, 1077, 1081, 1083, 1084, 1085, 1095, 1144, 1147, 1304, 1307, 1312, 1354, 1361 are amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1999.

### Annex A

## TITLE 231. RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### CHAPTER 100. RULES OF CONSTRUCTION

##### Rule 76. Definitions.

The following words and phrases when used in any rule promulgated by the Supreme Court under the authority of Article V, Section 10(c) of the Commission of 1968, or of any Act of Assembly, shall have the following meanings, respectively, unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included.

\* \* \* \* \*

**Affidavit**—A statement in writing of a fact or facts, signed by the person making it, that either (1) is sworn to or affirmed before an officer authorized by law to administer oaths, or before a particular officer or individual designated by law as one before whom it may be taken, and officially certified to in the case of an officer under [ his ] seal of office, or (2) is unsworn and contains a statement that it is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

\* \* \* \* \*

**Signature**—Includes mark when the individual cannot write, [ his ] the individual's name being written near it, and witnessed by another who writes his or her own name.

\* \* \* \* \*

##### Rule 102. Number. [ Gender. ] Tense.

The singular shall include the plural, and the plural, the singular. [ Words used in the masculine gender shall include the feminine and neuter. ] Words used in the past or present tense shall include the future.

#### CHAPTER 200. BUSINESS OF COURTS

##### Rule 201. Agreements of Attorneys.

Agreements of attorneys relating to the business of the court shall be in writing, except such agreements at bar



as are noted by the prothonotary upon the minutes or by the stenographer on [ his ] the stenographer's notes.

**Official Note:**

\* \* \* \* \*

The word "prothonotary" refers to the court official, irrespective of [ his ] title, who keeps the minutes of the court.

**Rule 206.5. Rule to Show Cause. Discretionary Issuance. Stay. Form of Order.**

\* \* \* \* \*

(d) The form of order required by subdivision (b) shall be substantially in the following form:

(CAPTION)  
ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, [ 199 ]\_, upon consideration of the foregoing petition, it is hereby ordered that

\* \* \* \* \*

(5) argument shall be held on \_\_\_\_\_, [ 199 ] \_\_\_\_ in Courtroom \_\_\_\_ of the \_\_\_\_\_ County Courthouse; and

\* \* \* \* \*

**Official Note:** In counties in which an evidentiary hearing is held, the order should be modified by deleting paragraphs (4) and (5) and substituting new paragraph (4) to read as follows:

(4) an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_\_\_, [ 199 ]\_ in Courtroom \_\_\_\_\_ of the \_\_\_\_\_ County Courthouse.

\* \* \* \* \*

**Rule 206.6. Rule to Show Cause. Issuance as of Course. Stay. Form of Order.**

\* \* \* \* \*

(c) The petitioner shall attach to the petition a proposed order substantially in the following form:

(CAPTION)  
ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, [ 199 ]\_, upon consideration of the foregoing petition, it is hereby ordered that

\* \* \* \* \*

(5) argument shall be held on \_\_\_\_\_, [ 199 ]\_ in Courtroom \_\_\_\_\_ of the \_\_\_\_\_ County Courthouse; and

\* \* \* \* \*

**Official Note:** Paragraphs (4) and (5) are optional in a county adopting the alternative procedure. This accommodates local procedures which do not fix a hearing date until the answer and depositions have been filed.

In counties in which an evidentiary hearing is held, the order should be modified by deleting paragraphs (4) and (5) and substituting new paragraph (4) to read as follows:

(4) an evidentiary hearing on disputed issues of material fact shall be held on \_\_\_\_\_ [ , 199\_ ] in Courtroom \_\_\_\_\_ of the \_\_\_\_\_ County Courthouse.

\* \* \* \* \*

**Rule 210. Form of Briefs.**

If briefs are filed they shall be typewritten, printed or otherwise duplicated and endorsed with the name of the case, the court [ , term ] and number and name and address of the attorney.

**Rule 211. Oral Arguments.**

Any party or [ his ] the party's attorney shall have the right to argue any motion and the court shall have the right to require oral argument. With the approval of the court oral argument may be dispensed with by agreement of the attorneys and the matter submitted to the court either on the papers filed of record, or on such briefs as may be filed by the parties. The person seeking the order applied for shall argue first [ , ] and [ he ] may also argue in reply, but such reply shall be limited to answering arguments advanced by the respondent. In matters where there may be more than one respondent, the order of argument by the respondents shall be as directed by the court.

**Rule 213. Consolidation, Severance and Transfer of Actions and Issues within a County. Actions for Wrongful Death and Survival Actions.**

\* \* \* \* \*

(e) A cause of action for the wrongful death of a decedent and a cause of action for [ his ] the injuries of the decedent which survives his or her death may be enforced in one action, but if independent actions are commenced they shall be consolidated for trial.

\* \* \* \* \*

**Rule 216. Grounds for Continuance.**

(A) The following are grounds for a continuance:

\* \* \* \* \*

(3) Inability to subpoena or to take testimony by deposition, commission, or letters rogatory, of any material witness, shown by affidavit which shall state:

(a) The facts to which the witness would testify if present or if [ his deposition should be taken ] deposed;

(b) The grounds for believing that the absent witness would so testify [ or give his deposition ];

\* \* \* \* \*

(d) The reasons for believing that the witness will attend the trial at a subsequent date, or that [ his ] the deposition of the witness can and will be obtained.

\* \* \* \* \*

**Rule 217. Costs on Continuance.**

\* \* \* \* \*

[ If the ] A party upon whom such costs are so imposed and who was at fault in delaying the application for continuance [ he ] may not recover such costs, if ultimately successful in the action; otherwise such costs shall follow the judgment in the action.

**Rule 222. Attorneys as Witnesses.**

Where any attorney acting as trial counsel in the trial of an action is called as a witness [ in ] on behalf of a party whom [ he ] the attorney represents, the court may determine whether such attorney may thereafter continue to act as trial counsel during the remainder of the trial.

**Rule 224. Regulation of Order of Proof.**

The court may compel the plaintiff in any action to produce all [ his ] evidence upon the question of the defendant's liability before [ he calls ] calling any witness to testify solely to the extent of the injury or damages. The defendant's attorney may then move for a nonsuit. If the motion is refused, the trial shall proceed. The court may, however, allow witnesses to be called out of order if the court deems it wise so to do.

**Rule 227.2. Court en Banc.**

All post-trial motions and other post-trial matters shall be heard and decided by the trial judge unless [ he ] the trial judge orders that the matter be heard by a court en banc of which [ he ] the trial judge shall be a member. If the trial judge for any reason cannot hear the matter, another judge shall be designated to act. No more than three judges shall constitute the court en banc.

**Rule 227.3. Transcript of Testimony.**

\* \* \* \* \*

**Official Note:** Pa.R.J.A. 5000.5(a) requires the request to be delivered to (1) the reporter, (2) the clerk of the trial court in which the proceeding took place or in which the reporter is employed, (3) the district court administrator or [ his ] the administrator's designee, and (4) in the case of an appeal, to the clerk of the appellate court. The request for transcription of the record may also be made in open court. See Pa.R.J.A. 5000.5(b).

\* \* \* \* \*

**Rule 229. Discontinuance.**

\* \* \* \* \*

**Official Note:** Court approval of a discontinuance must be obtained in any action in which a minor is a party, Rule 2039(a), an action for wrongful death in which a minor is beneficially interested, Rule 2206(a), an action in which an [ incompetent ] incapacitated person is a party, Rule 2064, and a class action, Rule 1714.

A plaintiff who asserts a cause of action ex contractu and joins as defendants persons liable to [ him ] the plaintiff in different capacities may not discontinue as to a defendant primarily liable without discontinuing as to all defendants secondarily liable. Rule 2231(e).

**Rule 230. Voluntary Nonsuit.**

\* \* \* \* \*

**Official Note:** A plaintiff who asserts a cause of action ex contractu and joins as defendants persons liable to [ him ] the plaintiff in different capacities may not suffer a voluntary nonsuit as to a defendant primarily liable without suffering a voluntary nonsuit as to all defendants secondarily liable. Rule 2231(e).

(b) [ After a ] A plaintiff who has rested [ his ] the case in chief [ he ] may not suffer a voluntary nonsuit without leave of court and cannot do so after the close of all the evidence.

**Rule 230.1. Compulsory Nonsuit at Trial.**

\* \* \* \* \*

**Official Note:** See (1) Rule 231(b) respecting the plaintiff's right to bring a second action on the same cause of action if a nonsuit has been entered; (2) Rule 227.1(c) as to the time for filing a motion to remove a nonsuit; (3) Rule 224 authorizing nonsuit on the question of liability

before testimony as to injury or damages; (4) Rules 2035 and 2057 forbidding motions for nonsuit against unrepresented minors or [ incompetents ] incapacitated persons on the ground of nonrepresentation; (5) Rule 2231(g) and (h) respecting the right to enter a compulsory nonsuit where plaintiffs or defendants have been joined in the alternative; and (6) Rule 2232(d) governing nonsuit in cases in which defendants have been joined but plaintiff has failed to prove a case against all of them.

**Rule 234.6. Form of Subpoena.**

A subpoena issued pursuant to Rule 234.1 shall be substantially in the following form:

\* \* \* \* \*

*Return of Service:* (Reverse side of Subpoena)

On the \_\_\_\_ day of \_\_\_\_\_, [ 19 ]\_, I, \_\_\_\_\_, served \_\_\_\_\_ (name of person served)

with the foregoing subpoena by:  
(Describe method of service)

\* \* \* \* \*

**Rule 234.9. Notice and Acknowledgment of Receipt of Subpoena by Mail.**

The notice and acknowledgment of receipt of subpoena by mail required by Rule 234.2(b)(3) shall be substantially in the following form:

**ACKNOWLEDGMENT OF RECEIPT OF SUBPOENA**

I acknowledge receipt of a copy of the subpoena in the above captioned matter. Date: \_\_\_\_\_ [ ,19\_ ]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Relationship to entity or  
[ Authority ] authority to receive the subpoena

**Rule 237. Notice of Praecipe for Final Judgment or Decree.**

No praecipe for judgment on a verdict, or for judgment on a decision in a trial without a jury or for a final decree following a decree nisi in equity shall be accepted by the prothonotary unless it includes a certificate that a copy of the praecipe has been mailed to each other party who has appeared in the action or to [ his ] the attorney of record for each other party.

**Rule 237.1. Notice of Praecipe for Entry of Judgment of Non Pros for Failure to File Complaint or by Default for Failure to Plead.**

\* \* \* \* \*

(2) No judgment of non pros for failure to file a complaint or by default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certification that a written notice of intention to file the praecipe was mailed or delivered

\* \* \* \* \*

(ii) in the case of a judgment by default, after the failure to plead to a complaint and at least ten days prior to the date of the filing of the praecipe to the party against whom judgment is to be entered and to [ his ] the party's attorney of record, if any.

\* \* \* \* \*

**Rule 237.6. Form of Agreement to Extend Time.**

An agreement to extend time required by Rule 237.2 shall be substantially in the following form:

(Caption)

AGREEMENT PURSUANT TO RULE 237.2 TO  
EXTEND TIME TO PLEAD  
FOLLOWING TEN-DAY NOTICE

It is agreed that \_\_\_\_\_

(Plaintiff(s)) (Defendant(s))

(is)(are) granted an extension of time through \_\_\_\_\_  
[ , 19 ] in which to file

- \_\_\_\_\_ 1. a complaint.
- \_\_\_\_\_ 2. an answer.
- \_\_\_\_\_ 3. an answer or preliminary objections.

\* \* \* \* \*

**Rule 239. Local Rules.**

\* \* \* \* \*

(c) To be effective and enforceable:

\* \* \* \* \*

(4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Civil Procedural Rules Committee, unless the rule relates to domestic relations matters, in which case it shall be filed with the Domestic Relations **Procedural Rules** Committee.

\* \* \* \* \*

**Rule 240. In Forma Pauperis.**

\* \* \* \* \*

(d)(1) If the party is represented by an attorney, the prothonotary shall allow the party to proceed in forma pauperis upon the filing of a praecipe which

(i) contains a certification by the attorney that he or she is providing free legal service to the party and [ that he ] believes the party is unable to pay the costs, and

(ii) is accompanied by the affidavit required by subdivision (c).

\* \* \* \* \*

(e) A party permitted to proceed in forma pauperis has a continuing obligation to inform the court of improvement in [ his ] the party's financial circumstances which will enable [ him ] the party to pay costs.

\* \* \* \* \*

**Rule 249. Authority of Individual Judge.**

\* \* \* \* \*

(b) [ When a ] A law judge may perform a function of the court, other than trying an action, [ he may act ] at any time and at any place within the judicial district.

\* \* \* \* \*

**CHAPTER 1000. ACTIONS AT LAW**

**Subchapter A. CIVIL ACTION**

**GENERAL**

**Rule 1002. Authority of Attorney.**

Any act other than verification required or authorized by this chapter to be done by a party may be done by [ his ] the party's attorney.

**VENUE AND PROCESS**

**Rule 1006. Venue. Change of Venue.**

(a) Except as otherwise provided by Subdivisions (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which [ he ] the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law.

\* \* \* \* \*

**Rule 1007.1. Jury Trial. Demand. Waiver.**

(a) In any action in which the right to jury trial exists, that right shall be deemed waived unless a party files and serves a written demand for a jury trial not later than twenty [ (20) ] days after service of the last permissible pleading. The demand shall be made by endorsement on a pleading or by a separate writing.

(b) Where an appeal is taken from an award in compulsory arbitration and a jury trial has not theretofore been demanded, the right to a jury trial shall be deemed waived unless the appellant endorses a demand for a jury trial on [ his ] the appeal, or unless the appellee files and serves a written demand for a jury trial not later than ten [ (10) ] days after being served with the notice of appeal.

\* \* \* \* \*

**PLEADINGS**

**Rule 1019. Contents of Pleadings. General and Specific Averments.**

\* \* \* \* \*

(h) A pleading shall state specifically whether any claim or defense set forth therein is based upon a writing. If so, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to [ him ] the pleader, it is sufficient so to state, together with the reason, and to set forth the substance of the writing.

**Rule 1021. Claim for Relief. Determination of Amount in Controversy.**

(a) Any pleading demanding relief shall specify the relief sought [ to which the party deems himself entitled ]. Relief in the alternative or of several different types, including an accounting, may be demanded.

\* \* \* \* \*

**Rule 1024. Verification.**

(a) Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified. The signer need not aver the source of [ his ] the information or expectation of ability to prove the averment or denial at the trial. A pleading may be verified upon personal knowledge as to a part and upon information and belief as to the remainder.

**Official Note:** See Definition Rule 76 for definition of "verified."

(b) If a pleading contains averments which are inconsistent in fact, the verification shall state that the signer has been unable after reasonable investigation to ascertain which of the inconsistent averments, specifying

them, are true but that [ he ] the signer has knowledge or information sufficient to form a belief that one of them is true.

(c) The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of [ his ] the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party.

**Rule 1031. Counterclaim.**

(a) The defendant may set forth in the answer under the heading "Counterclaim" any cause of action heretofore asserted in assumpsit or trespass which [ he ] the defendant has against the plaintiff at the time of filing the answer.

\* \* \* \* \*

**JUDGMENT UPON DEFAULT OR ADMISSION**

**Rule 1037. Judgment Upon Default or Admission. Assessment of Damages.**

(a) If an action is not commenced by a complaint, the prothonotary, upon praecipe of the defendant, shall enter a rule upon the plaintiff to file a complaint. If a complaint is not filed within twenty [ (20) ] days after service of the rule, the prothonotary, upon praecipe of the defendant, shall enter a judgment of non pros.

**Official Note:** See Rule 237.1(a)(2) which requires the praecipe for judgment of non pros to contain a certification of written notice of intent to file the praecipe.

(b) The prothonotary, on praecipe of the plaintiff, shall enter judgment against the defendant for failure to file within the required time a pleading to a complaint which contains a notice to defend or for any relief admitted to be due by the defendant's pleadings.

\* \* \* \* \*

(2) In all actions in which the only damages to be assessed are the cost of repairs made to property

\* \* \* \* \*

(ii) the praecipe shall be accompanied by an affidavit of the [ repairman ] person making the repairs; the affidavit [ of the repairman ] shall contain an itemized repair bill setting forth the charges for labor and material used in the repair of the property; it shall also state the qualifications of the person who made or supervised the repairs, that the repairs were necessary, and that the prices for labor and material were fair and reasonable and those customarily charged;

(iii) the plaintiff shall send a copy of the affidavit and repair bill to the defendant by registered mail directed to [ his ] the defendant's last known address, together with a notice setting forth the date of the intended assessment of damages, which shall not be less than ten [ (10) ] days from the mailing of the notice and a statement that damages will be assessed in the amount of the repair bill unless prior to the date of assessment the defendant by written praecipe files with the prothonotary

a request for trial on the issue of such damages; an affidavit of mailing of notice shall be filed.

\* \* \* \* \*

**Rule 1038. Trial Without Jury.**

\* \* \* \* \*

(b) The decision of the trial judge may consist only of general findings as to all parties but shall dispose of all claims for relief. The trial judge may [ , if he wishes, ] include as part of the decision specific findings of fact and conclusions of law with appropriate discussion.

(c) The decision may be made orally in open court at the end of the trial, and in that event shall be forthwith transcribed and filed in the office of the prothonotary, or it may be made thereafter in writing and filed forthwith. In either event the prothonotary shall notify all parties or their attorneys of the date of filing. The trial judge shall render [ his ] a decision within seven [ (7) ] days after the conclusion of the trial except in protracted cases or cases of extraordinary complexity.

\* \* \* \* \*

**Subchapter C. ACTION IN EJECTMENT**

**Rule 1054. Specific Averments. Abstract of Title.**

(a) The plaintiff shall describe the land in [ his ] the complaint.

(b) A party shall set forth in [ his ] the complaint or answer an abstract of the title upon which [ he ] the party relies at least from the common source of the adverse titles of the parties.

**Subchapter D. ACTION TO QUIET TITLE**

**Rule 1065. Specific Averments.**

The plaintiff shall describe the land in [ his ] the complaint.

**Rule 1066. Form of Judgment or Order.**

\* \* \* \* \*

(b) Upon granting relief to the plaintiff, the court

(1) shall order that the defendant be forever barred from asserting any right, lien, title or interest in the land inconsistent with the interest or claim of the plaintiff set forth in [ his ] the complaint, unless the defendant takes such action as the order directs within thirty [ (30) ] days thereafter. If such action is not taken within the [ 30 ] thirty-day period, the prothonotary on praecipe of the plaintiff shall enter final judgment;

\* \* \* \* \*

**Subchapter E. ACTION IN REPLEVIN**

**Rule 1073.1. Complaint. Specific Averments. Verification.**

\* \* \* \* \*

(b) The complaint shall be verified by the plaintiff upon personal knowledge or information and belief or by any other person having sufficient knowledge or information and belief, who shall set forth the source of [ his ] the information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by the plaintiff.

**Rule 1075.1. Writ of Seizure Upon Notice and Hearing.**

(a) After the complaint has been filed, the plaintiff may move for the issuance of a writ of seizure whether or not the complaint has been served. The court shall fix the date and time of the hearing which shall not be less than forty-eight [ (48) ] hours after filing the motion for the writ of seizure.

\* \* \* \* \*

(c) Notice of the hearing shall be substantially in the form provided by Rule 1353. It shall inform the defendant and any other person found in possession of the property of the place, date and time of the hearing. Service of the notice shall be made not less than twenty-four [ (24) ] hours before the hearing. When perishable property is to be seized or if other cause is shown, the court may set a shorter time for notice and hearing.

\* \* \* \* \*

(e) The hearing shall be held whether or not the defendant or other person found in possession of the property appears. If the court is satisfied that notice as provided by this rule has been given or a reasonable attempt to give notice has been made, it shall determine from the complaint, affidavits, testimony, admissions or other evidence, whether the plaintiff has established the probable validity of [ his ] the claim and, if so, it may order a writ of seizure to be issued upon the filing of a bond as provided by Rule 1075.3.

\* \* \* \* \*

(g) If the notice of the hearing has not been actually received notwithstanding a reasonable attempt to give notice, the defendant or any other person claiming the right to possession may, within seventy-two [ (72) ] hours after seizure, petition to vacate the writ of seizure.

**Rule 1075.2. Ex Parte Issuance of Writ of Seizure.**

(a) After the complaint has been filed, a writ of seizure may be issued by the court ex parte at any time upon motion of the plaintiff, upon the filing of a bond as provided by Rule 1075.3 if plaintiff satisfies the court of the probable validity of [ his ] the claim to possession and that there is probable cause to believe that before notice can be given or hearing held,

\* \* \* \* \*

(c) If a writ has been issued and the property has been seized, a hearing shall be held within seventy-two [ (72) ] hours after the seizure of the property. The notice of the hearing shall be substantially in the form provided by Rule 1353. It shall inform the defendant and any other person found in possession of the property of the place, date and time of the hearing. Service of the notice shall be in the manner provided by Rule 1075.1(d).

(d) The hearing shall be held whether or not the defendant or other person found in possession of the property is served or appears. If the court determines that no notice as required by this rule has been given or no reasonable attempt to give such notice has been made, it shall vacate the writ and the property shall be returned to the person from whom it was taken. If the court is satisfied that notice as required by this rule has been given or a reasonable attempt to give such notice has been made, it shall determine from the complaint, affidavits, testimony, admissions or other evidence whether the plaintiff has established the probable validity of [ his ]

the claim to possession and of the grounds for the ex parte issuance of the writ. If the court has determined that plaintiff has established such validity, it shall enter an order confirming the ex parte issuance of the writ.

(1) If the plaintiff fails to establish [ his ] the probable right to possession, the court shall vacate the writ and the property shall be returned to the person from whom it was taken. Thereafter, subject to the payment of expenses as hereinafter provided, the action shall then proceed as if no writ of seizure has been issued.

(2) If the plaintiff establishes [ his ] the probable right to possession but fails to establish the probable validity of the grounds for ex parte issuance of the writ, the court, upon payment by the plaintiff of the expenses as hereinafter provided, may permit [ him ] the plaintiff to retain possession pending judgment subject to the right of a party to file a counterbond or to exercise any other right under these rules.

\* \* \* \* \*

**Rule 1075.3. Writ of Seizure. Bond.**

\* \* \* \* \*

(b) The plaintiff's bond shall be in double the value of the property averred in the complaint with security approved by the prothonotary, naming the Commonwealth as obligee, conditioned that if the plaintiff fails to maintain [ his ] the right to possession of the property [ he ] the plaintiff shall pay to the party entitled thereto the value of the property and all legal costs, fees and damages sustained by reason of the issuance of the writ.

**Rule 1075.4. Service of the Writ of Seizure.**

\* \* \* \* \*

(b) When a person in possession of the property who is not a party to the action is served with a writ of seizure, the sheriff shall notify [ him ] the person that he or she has been added as a defendant and is required to defend the action and shall so state in [ his ] the return and [ said ] the person shall thereupon become a defendant in the action. Copies of all prior pleadings and motions not previously furnished to [ him ] the person shall be forthwith served upon him or her by the plaintiff in the manner provided by Rule 440.

**Rule 1076. Counterbond.**

(a) A counterbond may be filed with the prothonotary by a defendant or intervenor claiming the right to the possession of the property, except a party claiming only a lien thereon, within seventy-two [ (72) ] hours after the property has been seized, or within seventy-two [ (72) ] hours after service upon the defendant when the taking of possession of the property by the sheriff has been waived by the plaintiff as provided by Rule 1077(a), or within such extension of time as may be granted by the court upon cause shown.

**Official Note:** A person not a party to the action who claims the right to possession of the property may intervene in the action as a defendant. See Rule 2327. Since intervention will ordinarily require more than seventy-two hours, the applicant for intervention should also apply for an extension of the time within which to file a counterbond if he or she desires to obtain possession of the property after [ he is permitted to intervene ] intervention has been allowed.

After the allowance of intervention, the intervenor has the same status as an original party. See Rule 2330(a).

Extensions of time may be needed when there are hearings under Rule 1075.2.

(b) The counterbond shall be in the same amount as the original bond, with security approved by the prothonotary, naming the Commonwealth of Pennsylvania as obligee, conditioned that if the party filing it fails to maintain [ his ] the right to possession of the property he or she shall pay to the party entitled thereto the value of the property, and all legal costs, fees and damages sustained by reason of the delivery of the seized property to the party filing the counterbond.

**Rule 1077. Disposition of Seized Property. Sheriff's Return.**

(a) When a writ of seizure is issued, the sheriff shall leave the property during the time allowed for the filing of a counterbond in the possession of the defendant or of any other person found in possession of the property if the plaintiff so authorizes [ him ] the sheriff in writing.

(b) Property taken into possession by the sheriff shall be held by [ him ] the sheriff until the expiration of the time for filing a counterbond. If the property is not ordered to be impounded and if no counterbond is filed, and if no proceedings are pending and undecided under Rule 1075.1(g) or Rule 1075.2(c), the sheriff shall deliver the property to the plaintiff.

(c) If the property is not ordered to be impounded and the person in possession at the time the sheriff executed the writ of seizure files a counterbond, the property shall be delivered to [ him, but if he ] that person. If that person does not file a counterbond, the property shall be delivered to the party first filing a counterbond.

\* \* \* \* \*

(e) The return of the sheriff to the writ of seizure shall state the disposition made by [ him ] the sheriff of the property and the name and address of any person found in possession of the property.

**Rule 1081. Concealment of Property. Examination of Defendant.**

The court, at any time during the pendency of the action, upon the petition of the plaintiff setting forth

(1) that [ he ] the plaintiff is without knowledge of the location of the property and has not [ with reasonable diligence ] been able with reasonable diligence to ascertain its location; or

\* \* \* \* \*

**Rule 1083. Judgment in Rem for Property When Defendant Is Not Served and Does Not Appear.**

If the property has been seized by the sheriff, the court, upon motion of the plaintiff after forty-five [ (45) ] days from seizure of the property, may enter judgment in rem for the property against any defendant who has not been served and who has not appeared in the action.

**Rule 1084. Judgment Before Trial When Defendant is Served or Appears.**

(a) If the defendant is served or appears in the action and judgment is entered before trial for the party in possession of the property, the judgment shall determine the party's right to

(1) [ his right to ] retain possession of the property, and  
(2) [ his right to ] recover special damages, if any.

(b) If judgment is entered before trial for a party not in possession of the property, the judgment shall determine

(1) [ his ] the party's right to recover possession of the property,

(2) the money value of the property based upon the value set forth in the plaintiff's complaint, and

(3) [ his ] the party's right to recover special damages, if any.

\* \* \* \* \*

**Rule 1085. Judgment After Trial.**

(a) If judgment is entered after trial for the party in possession of the property, the judgment shall determine

(1) [ his ] the party's right to retain possession of the property, and

(2) the amount of any special damages sustained.

(b) If judgment is entered after trial for a party not in possession of the property, the judgment shall determine

(1) [ his ] the party's right to recover possession of the property,

\* \* \* \* \*

**Subchapter F. ACTION IN MANDAMUS**

**Rule 1095. The Complaint.**

The plaintiff shall set forth in the complaint:

\* \* \* \* \*

(3) the act or duty the defendant is required to perform and [ his ] the refusal to perform it;

\* \* \* \* \*

(7) a prayer for the entry of a judgment against the defendant commanding [ him to perform the act or duty he is required to perform ] that the defendant perform the act or duty required to be performed and for damages, if any, and costs.

**Subchapter I. ACTION OF MORTGAGE FORECLOSURE**

**Rule 1144. Parties. Release of Liability.**

(a) The plaintiff shall name as defendants

\* \* \* \* \*

(3) the real owner of the property, or if [ he ] the real owner is unknown, the grantee in the last recorded deed.

(b) Unless named as real owner, neither the mortgagor nor [ his ] the personal representative, heir or devisee of the mortgagor, need be joined as defendant if the plaintiff sets forth in [ his ] the complaint that [ he ] the plaintiff releases [ him ] such person from liability for the debt secured by the mortgage.

**Rule 1147. The Complaint.**

The plaintiff shall set forth in the complaint:

\* \* \* \* \*

(3) the names, addresses and interest of the defendants in the action and that the present real owner is unknown if [ he ] the real owner is not made a party;

\* \* \* \* \*

**Official Note:** The plaintiff may also set forth in the complaint a release of the mortgagor and [his] the mortgagor's successors in interest. See Rule 1144(b) [supra].

\* \* \* \* \*

**CHAPTER 1300. COMPULSORY ARBITRATION**

**Subchapter A. RULES**

**Rule 1304. Conduct of Hearing. Generally.**

\* \* \* \* \*

(c) A stenographic record or a recording of the hearing shall not be made unless a party does so at his or her own expense. If a party has a stenographic record or a recording made, he or she shall upon request furnish a copy to any other party upon payment of a proportionate share of the total cost of making the record or recording.

**Rule 1307. Award. Docketing. Notice. Lien. Judgment. Molding the Award.**

(a) The prothonotary shall

\* \* \* \* \*

(2) immediately send by ordinary mail a copy of the award, with notice of the date and time of its entry on the docket and the amount of arbitrators' compensation to be paid upon appeal, to each party's attorney of record, or to the party if [he] the party has no attorney of record; and

\* \* \* \* \*

**Rule 1312. Form of Oath. Award and Notice of Entry of Award.**

The oath, award of arbitrators and notice of entry shall be in substantially the following form:

(Caption)

OATH

We do solemnly swear (or affirm) that we will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that we will discharge the duties of our office with fidelity.

\_\_\_\_\_  
**[ Chairman ] Chair**

AWARD

We, the undersigned arbitrators, having been duly appointed and sworn (or affirmed), make the following award: (Note: If damages for delay are awarded, they shall be separately stated.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, Arbitrator, dissents. (Insert name if applicable.)

Date of Hearing: \_\_\_\_\_

**[ Chairman ] Chair**

Date of Award \_\_\_\_\_

\_\_\_\_\_

NOTICE OF ENTRY OF AWARD

Now, the \_\_\_ day of \_\_\_\_\_, [ 19 ]\_\_\_\_\_ at \_\_\_\_\_ .M., the above award was entered upon the docket and notice thereof given by mail to the parties or their attorneys.

\* \* \* \* \*

**Subchapter B. FORMS**

**Rule 1354. Form of Writ of Seizure.**

The writ of seizure shall be directed to the sheriff and shall be in substantially the following form:

Commonwealth of Pennsylvania  
County of \_\_\_\_\_

(Caption)

WRIT OF SEIZURE

To the Sheriff of said County:

You are directed to seize the following property:  
(specifically describe property)

If the property is found in the possession of [ anyone ] a person not already a defendant, you are directed to add [ him ] the person as a defendant, and notify [ him ] the person that he or she has been added as a defendant and is required to defend the action.

Date of Writ \_\_\_\_\_  
(Name of Prothonotary)

(SEAL) By: \_\_\_\_\_  
(Deputy)

**[ Official Note: Former Rule 1354. Form of Writ of Replevin With Bond was rescinded. ]**

**Rule 1361. Form of Notice to Plead.**

The notice to plead shall be directed to the adverse party and shall be in substantially the following form:

To \_\_\_\_\_:  
(Name of Adverse Party)

You are hereby notified to file a written response to the enclosed (name of pleading) within twenty (20) days from service hereof or a judgment may be entered against you.

\_\_\_\_\_  
(Party Filing Pleading or [ His ] the Party's Attorney)

**Explanatory Comment**

The 1999 technical amendments to the rules of civil procedure accomplish three purposes. First, the rules are made gender neutral. For example, rules which contained references to "he" have been revised by substituting the phrase "he or she" or by replacing the pronoun with the original noun, e.g., "the deponent."

Second, there are a few rules containing forms which are revised by eliminating the date reference to the 1900's in light of the turn of the century. For example, the form of order contained in Rule 206.5 governing petitions formerly began, "AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_ . . ." The form is amended by substituting a blank line in place of "199\_."

Third, the rules have been inconsistent in the use of a word or a word and numeral to represent a number. For example, one rule might refer to "ten days" while another rule referred to "ten (10)" days. The rules are revised to use numerical representation by word only, e.g., "ten days." The use of a word and numeral remains only in forms such as the notice to plead prescribed by Rule 1361

which directs a party to file a response "within twenty (20) days from service hereof . . ."

By the Civil Procedural Rules Committee

EDWIN L. KLETT, Chair

[Pa.B. Doc. No. 99-694. Filed for public inspection April 30, 1999, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1500, 1600, 1650, 1700, 2000, 2020, 2120, 2200, 2220, 2250, 2300, 2320, 2350 AND 2980]

Technical Amendment of Rules 1501—2984; No. 311, Doc. No. 5

Order

Per Curiam:

And Now, this 12th day of April, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

Rules 1501, 1503, 1505, 1506, 1507, 1508, 1515, 1517, 1529, 1530, 1531, 1533, 1534, 1555, 1559, 1566, 1569, 1572, 1573, 1576, 1654, 1656, 1659, 1707, 1711, 2002, 2004, 2026, 2027, 2028, 2030, 2031, 2032, 2034, 2036, 2037, 2130, 2133, 2203, 2204, 2206, 2227, 2229, 2231, 2232, 2252, 2255, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2316, 2327, 2328, 2330, 2351, 2352, 2354, 2984, are amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1999.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1500. ACTION IN EQUITY

Subchapter A. RULES

Rule 1501. Conformity to Civil Action.

\* \* \* \* \*

Official Note: In addition to the rules expressly [regulating the action of assumpsit] governing the civil action, Rules 1001 to [1037] 1038.2, 1351 and 1361, the following rules apply to all actions at law and in equity:

Business of courts, Rules 201 to 250;

\*Actions by real parties in interest, Rules 2001 to 2025;

Minors as parties, Rules 2026 to 2050;

[Incompetents] Incapacitated persons as parties, Rules 2051 to 2075;

\* \* \* \* \*

Rule 1503. Venue.

(a) Except as otherwise provided by an Act of Assembly, Rule of the Supreme Court or by Subdivision (b), (c) or (d), an action may be brought only in a county in which

\* \* \* \* \*

(3) but a judgment, order or decree shall not bind a defendant personally unless [he] the defendant is

served within the county, or within the Commonwealth in conformity with Rule 1504(b), or unless [he] the defendant appears or otherwise submits [himself] to the jurisdiction of the court.

\* \* \* \* \*

Rule 1505. Defendant Not Served.

A defendant who has not been served may be served at any time during the pendency of the action provided the writ or complaint has been reissued or reinstated as to [him] that defendant within [(30)] thirty days preceding service.

\* \* \* \* \*

Rule 1506. Stockholder's Derivative Action.

(a) In an action to enforce a secondary right brought by one or more stockholders or members of a corporation or similar entity because the corporation or entity refuses or fails to enforce rights which could be asserted by it, the complaint shall set forth:

\* \* \* \* \*

(3) either

(i) that each plaintiff was a stockholder or owner of an interest in the corporation or other entity at the time of the transaction of which [he] the plaintiff complains or that [his] the plaintiff's stock or interest devolved upon [him] the plaintiff by operation of law from a person who was a stockholder or owner at that time, or

\* \* \* \* \*

Rule 1507. Specific Averments. Possible Persons Interested in Property. Appointment of a Representative

When a person interested in property which is the subject of an action should be made a party but [his] the person's name or interest in the property cannot be ascertained and [he] the person is not represented in the action, the plaintiff or defendant may so aver in [his] the complaint or answer. The court shall require that appropriate notice be given such person by advertisement or in such manner as the court by local rule or special order shall direct. If appropriate notice cannot be given or if the person does not appear after notice is given, the court may appoint a trustee or guardian ad litem to represent [him] the person and the decree entered in the action shall bind [his] the person's interest in the property.

Rule 1508. Pleading More Than One Cause of Action.

The plaintiff may state in [his] the complaint two or more causes of action cognizable in equity.

\* \* \* \* \*

Rule 1515. Accountants and Experts.

In actions involving complicated accounts, or questions requiring the evidence of experts, the court may employ an accountant or other expert to aid in the proper [depositions] disposition of the action. The report or evidence of such accountant or other expert shall be available to any party and [he] the accountant or other expert shall be subject to examination or cross-examination by any party. [He] The accountant or other expert shall be paid reasonable compensation for [his] services rendered.



**Rule 1517. The Adjudication. Notice.**

\* \* \* \* \*

**Official Note:** Adopted January 4, 1952; effective July 1, 1952; amended June 27, 1969, effective September 1, 1969.

See [ **Supreme Court Rule 78** ] **Rule of Judicial Administration 703** which requires a report to the [ **Supreme Court** ] **Court Administrator of Pennsylvania** of all matters undisposed of for [ **60** ] **ninety** days or more [ **after having been submitted** ] **as of the last day of the reporting period.**

**Rule 1529. Enforcement of Orders. Execution Process.**

(a) Execution process available in actions at law may be used in actions in equity where appropriate. A party entitled to subrogation against another party shall be entitled to execution process to enforce [ **his** ] **this** right.

(b) Where appropriate, the court may order the prothonotary or sheriff to perform any act which a party fails to perform within the time specified by the order or decree. The designated officer shall act in the name of and for the delinquent party and with the same effect as though the act were performed by [ **him** ] **the delinquent party.** The court may order the recording or registration of any document thus executed and tax the costs against the delinquent party.

(c) A party who fails to comply with a decree may be arrested by attachment and [ **his** ] **the property of the delinquent party** sequestered. If arrested, [ **he** ] **the delinquent party** may, upon furnishing such bail as the court shall require, be conditionally released for the purpose of performing the decree. The attachment and sequestration shall not be dissolved until the decree has been performed and the costs of the action paid.

**Official Note:**

\* \* \* \* \*

See **Rule 3250 imposing limitations upon the right of arrest.**

**Rule 1530. Special Relief. Accounting.**

\* \* \* \* \*

(c) Each party shall be served with a copy of the account in the same manner as a pleading. Exceptions may be filed to the account within twenty [ **(20)** ] days after service.

\* \* \* \* \*

(e) The auditor shall file a report, to which exceptions may be filed within twenty [ **(20)** ] days. If no exceptions are filed to the report of the auditor, the court shall enter judgment for the amount, if any, determined by the auditor to be due. If exceptions are filed, the court shall determine the amount, if any, which may be due.

**Rule 1531. Special Relief. Injunctions.**

\* \* \* \* \*

(d) An injunction granted without notice to the defendant shall be deemed dissolved unless a hearing on the continuance of the injunction is held within five [ **(5)** ] days after the granting of the injunction or within such other time as the parties may agree or as the court upon cause shown shall direct.

\* \* \* \* \*

(f)(1) When a preliminary or special injunction involving freedom of expression is issued, either without notice or after notice and hearing, the court shall hold a final hearing within three [ **(3)** ] days after demand by the defendant. A final decree shall be filed in the office of the prothonotary within twenty-four [ **(24)** ] hours after the close of the hearing. If the final hearing is not held within the three [ **(3)** ] day period, or if the final decree is not filed within twenty-four [ **(24)** ] hours after the close of the hearing, the injunction shall be deemed dissolved.

**Official Note:** The three [ **(3)** ] day period is the maximum time. In particular cases a shorter period may be required. The equity side of the Court is always open. See Rule 1502.

\* \* \* \* \*

(3) The trial judge shall file a written memorandum supporting the final decree within five [ **(5)** ] days after it is filed.

**Rule 1533. Special Relief. Receivers.**

\* \* \* \* \*

(b) No officer of a corporation or member of a partnership shall be appointed sole temporary receiver of the property of the corporation or partnership but, after hearing, [ **he** ] **an officer or member** may be appointed sole permanent receiver.

(c) The court may refuse to appoint a receiver for property and may permit the person in possession to retain it if [ **he** ] **the person** gives such security as the court shall direct. The court may remove a receiver and restore the property to the person from whom it was taken if [ **he** ] **the person** gives such security as may be required.

(d) Except as otherwise provided by an Act of Assembly, a receiver, whether temporary or permanent, must give such security for the faithful performance of [ **his** ] **the receiver's** duty as the court shall direct. A receiver shall not act until he **or she** has given the security required.

\* \* \* \* \*

**Rule 1534. Accounting by Fiduciaries.**

(a) Except as otherwise provided by an Act of Assembly, [ **when** ] a receiver, assignee or other fiduciary [ **files his** ] **filing an account** [ **he** ] shall give notice of [ **his** ] **the** intention to apply for confirmation thereof on the date fixed by the court by local rule or special order. The notice shall also set forth that the account may be confirmed and distribution ordered unless exceptions are filed with the prothonotary before that date.

\* \* \* \* \*

**Subchapter B. PARTITION OF REAL PROPERTY**

**Rule 1555. Pleading More Than One Cause of Action.**

(a) The plaintiff may state in the complaint causes of action for the partition of all or any part of any properties in which [ **he** ] **the plaintiff** and the defendants are co-tenants, irrespective of their location in the Commonwealth or of the proportion of the plaintiff's interest in the several properties.

\* \* \* \* \*

**Rule 1559. Master. Hearing.**

[ If the court appoints a ] A master [ he ] who is appointed by the court shall make such examinations and hold such hearings as may be necessary, giving reasonable notice thereof. [ He ] The master may employ appraisers and, with the authorization of the court, such other experts as are necessary to enable [ him ] the master to perform his or her duties.

\* \* \* \* \*

**Rule 1566. Preliminary Determination. Notice to Accept or Reject. Private Sale Confined to the Parties.**

\* \* \* \* \*

(b)(1) The notice in the case of proposed partition under Rule 1560(b) or (c) shall require the parties within twenty [ (20) ] days after service thereof to accept or reject the proposed plan of allocation. The notice in the case of inability to partition shall state that the property will be sold unless objection is made as provided in Rule 1563(b).

\* \* \* \* \*

(c) If any party rejects the proposed allotment of the purparts or if no objection is made to a sale under Rule 1563, the property shall be offered for private sale by open bidding confined to the parties to be held upon not less than twenty [ (20) ] days' notice.

\* \* \* \* \*

**Rule 1569. Master's Report. Exceptions.**

(a) [ If the court appoints a ] A master [ he ] who is appointed by the court shall file a report with respect to the matters submitted [ to him ]. The report shall follow the form of adjudication in Rule 1570, insofar as the scope of the reference to the master permits.

(b) The master shall give all persons in interest written notice of the date on which he or she intends to file [ his ] the report and proposed decree and shall specify an address within the county where they may be examined. The master may change [ his ] the report and proposed decree as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

\* \* \* \* \*

**Rule 1572. Sale Not Confined to Parties.**

\* \* \* \* \*

(c) [ If the ] A purchaser who is a party or a lien holder whose lien is discharged by the sale [ he ] shall be allowed a credit equal to the amount of his or her distributive interest in the purchase price, less any charges assessed against him or her. The excess of the bid shall be paid in cash.

\* \* \* \* \*

**Rule 1573. Return of Sale and Schedule of Distribution.**

(a) Where the sale has been conducted by a master [ he ], the master shall promptly file with the prothonotary a return of sale together with a proposed decree which shall

\* \* \* \* \*

(b) The master shall give all persons in interest written notice of the date on which he or she intends to file [ his ] the return of sale and proposed decree and shall specify an address within the county where they may be examined. The master may change [ his ] the return of sale and proposed decree as he or she deems proper before filing them, but if any changes are made written notice thereof shall be given to all parties.

\* \* \* \* \*

**Subchapter C. ACTIONS TO PREVENT WASTE**

**Rule 1576. Remedies in Pending Actions.**

(a) In any action at law or in equity, on petition of any party setting forth facts entitling [ him ] the party to such relief, the court may, at any time before or after judgment, in accordance with Rule 1531(a), [ 1531 ](c), [ 1531 ](d) and [ 1531 ](e), and upon such terms and conditions, including the filing of security, as it may fix, issue an injunction pendente lite to restrain waste of real property which is a subject of the action.

\* \* \* \* \*

**CHAPTER 1650. ACTIONS IN MECHANICS' LIENS**

**Rule 1654. Defendant.**

(a) The plaintiff shall name as defendant the owner [ , ] named in the claim and the owner, if known, at the time the action is commenced.

(b) If the last owner of record prior to the commencement of the action has died, the plaintiff shall name as a defendant [ his ] the personal representative, heir or devisee of such owner, if known.

\* \* \* \* \*

**Rule 1656. The Complaint.**

The plaintiff shall set forth in the complaint

\* \* \* \* \*

(2) the court [ , term, ] and number and the date of the filing of the claim and a copy thereof as an exhibit;

\* \* \* \* \*

**Rule 1659. Compelling Commencement of Action.**

If a claimant has filed a claim and does not file a complaint, the prothonotary, upon praecipe of an owner, shall enter a rule as of course upon the claimant to file a complaint within twenty [ (20) ] days after service of the rule, or be forever barred from so doing. If the claimant fails to do so, the prothonotary, upon praecipe of the owner and proof of service, shall enter judgment for the defendant.

**CHAPTER 1700. CLASS ACTIONS**

**Rule 1707. Motion for Certification of Class Action. Time for Filing. Hearing**

(a) Within thirty [ (30) ] days after the pleadings are closed or within thirty [ (30) ] days after the last required pleading was due, the plaintiff shall move that the action be certified as a class action. The court may extend the time for cause shown. If the plaintiff fails to move for certification, the court if so notified shall promptly set a date for a certification hearing.

\* \* \* \* \*

**Rule 1711. The Plaintiff Class. Exclusion. Inclusion.**

\* \* \* \* \*

(b) If the court finds that

\* \* \* \* \*

(2) other special circumstances exists which are described in the order, the court may state in its order that [ no ] a person shall not be a member of the plaintiff class or subclass unless by a specified date [ he ] the person files of record a written election to be included in the class or subclass.

**CHAPTER 2000. ACTIONS BY REAL PARTIES IN INTEREST**

**Rule 2002. Prosecution of Actions by Real Parties in Interest. Exceptions.**

\* \* \* \* \*

(b) A plaintiff may sue in his or her own name without joining as plaintiff or use-plaintiff any person beneficially interested when such plaintiff

(1) is acting in a fiduciary or representative capacity, which capacity is disclosed in the caption and in the plaintiff's initial pleading; or

(2) is a person with whom or in whose name a contract has been made for the benefit of another.

\* \* \* \* \*

**Rule 2004. Transfer of Interest in Pending Action.**

If a plaintiff has commenced an action in his or her own name and thereafter transfers [ his ] the interest therein, in whole or in part, the action may continue in the name of the original plaintiff, or upon petition of the original plaintiff or of the transferee or of any other party in interest in the action, the court may direct the transferee to be substituted as plaintiff or joined with the original plaintiff.

**CHAPTER 2020. MINORS AS PARTIES**

**Rule 2026. Definitions.**

As used in this chapter.

\* \* \* \* \*

"guardian," except where the context otherwise indicates, means the party representing the interest of a minor party in any action, whether [ he is ] as (a) the guardian of a minor appointed by any court of competent jurisdiction, (b) a person in the nature of a next friend selected to represent a minor plaintiff in an action, or (c) a guardian ad litem specially appointed by the court in which the action is pending;

**Official Note:** A testamentary guardian is not included as such within the above definition of guardian. A testamentary guardian may, however, obtain the right to represent the minor in litigation, not in [ his ] the capacity as testamentary guardian, but by qualifying as a guardian within the above definition either by selection under clause (b) or appointment under clause (c).

\* \* \* \* \*

**Rule 2027. Guardian to Represent Minor.**

When a [ minor is ] party to an action, [ he ] a minor shall be represented by a guardian who shall supervise and control the conduct of the action in behalf of the minor.

**Rule 2028. Actions By and Against Minors. Averments in Plaintiff's Pleading.**

(a) An action in which a minor is plaintiff shall be entitled "A, a Minor, by B, [ his ] Guardian," against the party defendant.

**Official Note:** Under the above rule, the representative of a minor plaintiff is termed a "guardian" regardless of whether under prior practice he or she would be termed a legal guardian or a next friend.

(b) The initial pleading filed in behalf of a minor plaintiff shall state the name and address of his or her guardian and [ his ] the guardian's relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person selected as guardian is a guardian appointed by any court of competent jurisdiction or by a will duly probated, the initial pleading shall contain a reference to the record of the appointment.

(c) An action in which a minor is the defendant shall be commenced against the minor by name in the manner in which a like action is commenced against an adult.

**Official Note:** An action against a minor is begun in the same manner as an action against an adult, although by Rule 2034, infra, as under prior practice, the subsequent appointment of a guardian to represent the minor is essential to the rendition of a valid judgment against [ him ] the minor.

\* \* \* \* \*

**Rule 2030. Setoffs and Counterclaims.**

In an action brought on behalf of a minor the defendant may assert any setoff or counterclaim which [ he ] the defendant has against the minor.

**Rule 2031. Selection and Appointment of Guardians.**

(a) A minor plaintiff may select [ his ] a guardian, but such selection shall not bar the court from removing the guardian for cause in accordance with these rules.

(b) If a minor party to an action is not represented, the court shall appoint a guardian for [ him ] the minor either upon its own motion or upon the petition of (1) the minor party, (2) a guardian of the minor appointed by any court of competent jurisdiction, or by a will duly probated, (3) any relative of the minor, or (4) any other party to the action.

(c) The petition shall state the name and address of the person proposed as guardian, and [ his ] the guardian's relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person proposed as guardian is a guardian appointed by any court of competent jurisdiction or by a will duly probated, the petition shall contain a reference to the record of such appointment.

\* \* \* \* \*

**Rule 2032. Affidavit as to Age.**

A party to an action may file and serve on any other party thereto a rule as of course to file of record an affidavit setting forth whether [ he ] the other party is an adult or a minor.

**Rule 2034. Procedure When Minority of a Party is Ascertained.**

\* \* \* \* \*

(c) If the appointment of a guardian is made during the trial, the court may grant a continuance to enable the guardian properly to present the minor's case. The court may refuse a continuance if the minor has previously filed an affidavit asserting his or her majority.

\* \* \* \* \*

**Rule 2036. Affidavits by Minors.**

Affidavits which are required to be made by a party to an action, including affidavits to the pleadings, may be made by a minor if [ he ] the minor has sufficient mental capacity to understand the contents of the paper to which the affidavit is made and to appear in court as a witness. If the minor lacks such capacity, such affidavits shall be made by any competent person having knowledge or information as to the facts averred therein and shall state the reason for the minor's lack of capacity to make such affidavit.

**Rule 2037. Minor Becoming of Age During Pendency of Action.**

(a) When a minor reaches majority during the pendency of the action, the minor or [ his ] the minor's guardian may have the record amended to remove the name of the guardian.

\* \* \* \* \*

**CHAPTER 2120. PARTNERSHIPS AS PARTIES**

**Rule 2130. Venue.**

\* \* \* \* \*

(b) Except as otherwise provided by subdivision (c) of this rule, an action against a liquidator may be brought in and only in a county where the liquidator is liquidating the partnership business or in which the partnership last regularly conducted business, or in the county where the cause of action arose or in a county where a transaction or occurrence took place out of which the cause of action arose. This rule shall not apply to an action against a liquidator deriving [ his ] authority under the laws of the United States.

\* \* \* \* \*

**Rule 2133. Indexing of judgments.**

\* \* \* \* \*

(c) A judgment against an individual partner shall be indexed against [ him ] the partner as an individual.

\* \* \* \* \*

**CHAPTER 2200. ACTIONS FOR WRONGFUL DEATH**

**Rule 2203. Procedure to remove plaintiff.**

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

This rule has the effect of making the plaintiff in the wrongful death action accountable to the court in which the action is brought for his or her conduct therein. In addition, it permits the parties beneficially interested in the damages recovered in the action to exercise some supervisory control over the conduct of the action by enabling them to obtain the assistance of the court if the action is not properly conducted on their behalf.

**Rule 2204. Averments in plaintiff's pleading.**

In addition to all other facts required to be pleaded, the initial pleading of the plaintiff in an action for wrongful death shall state the plaintiff's relationship to the decedent, [ his ] the plaintiff's right to bring the action, the names and last known residence addresses of all persons entitled by law to recover damages, their relationship to the decedent and that the action was brought in their behalf.

**Rule 2206. Settlement, compromise, discontinuance and judgment.**

\* \* \* \* \*

(b)(1) \* \* \*

\* \* \* \* \*

(4) If the minor or the incapacitated person has no such guardian, and none is to be appointed, the court may order

(i) any amount in cash of a resident or nonresident minor or incapacitated person to be deposited in one or more savings accounts in the name of the minor or the incapacitated person in banks, building and loan associations, savings and loan associations or credit unions, deposits in which are insured by a Federal governmental agency provided that the amount deposited in any one such savings institution shall not exceed the amount to which such accounts are thus insured, or in one or more accounts in the name of the minor or the incapacitated person investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible financial institutions. Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains [ his ] majority or unless the incapacitated person is adjudicated to have capacity, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record;

\* \* \* \* \*

**CHAPTER 2200. JOINDER OF PARTIES**

**Rule 2227. Compulsory joinder.**

\* \* \* \* \*

(b) If a person who must be joined as a plaintiff refuses to join, he or she shall, in a proper case, be made a defendant or an involuntary plaintiff when the substantive law permits such involuntary joinder.

**Rule 2229. Permissive joinder.**

\* \* \* \* \*

(b) A plaintiff may join as defendants persons against whom [ he ] the plaintiff asserts any right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the liabilities of all such persons will arise in the action.

\* \* \* \* \*

(d) A [ person ] plaintiff who asserts a cause of action ex contractu may join as defendants all or any one or more persons alleged to be liable to [ him ] the plaintiff on or by reason of the breach of the contractual obligation sued upon, regardless of the capacities in which such persons are respectively liable or whether they are primarily or secondarily liable or whether their liabilities arise [ form ] from the same or separate acts

or undertakings; but where the liability of any defendant is solely joint, the plaintiff shall join all other persons jointly liable with such defendant.

\* \* \* \* \*

**Rule 2231. Effect of joinder. practice in general.**

\* \* \* \* \*

(e) If two or more defendants are joined under Rule 2229(d), the plaintiff shall not be permitted to discontinue or enter a nolle prosequi or a voluntary nonsuit as to any defendant primarily liable to [ him ] the plaintiff unless [ he ] the plaintiff also does so as to all defendants secondarily liable to [ him ] the plaintiff for the default of such defendant.

\* \* \* \* \*

**Rule 2232. Defective joinder. change of parties.**

\* \* \* \* \*

(b) Joinder of unnecessary parties is not ground for dismissal of an action. After notice to all other parties, a party may be dropped by order of the court whenever [ he ] the party has been misjoined or no claim for relief is asserted against [ him ] the party in the action by any other party.

(c) At any stage of an action, the court may order the joinder of any additional person who could have joined or who could have been joined in the action and may stay all proceedings until such person has been joined. The court in its discretion may proceed in the action although such person has not been made a party if jurisdiction over [ him ] the person cannot be obtained and [ he ] the person is not an indispensable party to the action.

\* \* \* \* \*

**CHAPTER 2250. JOINDER OF ADDITIONAL DEFENDANTS**

**Rule 2252. Right to Join Additional Defendants.**

\* \* \* \* \*

(b) If the person sought to be joined is not a party to the action the joining party may file as of course a praecipe for a writ or a complaint.

(1) If the joinder is by writ the joining party shall file [ his ] a complaint within [ 20 ] twenty days from the filing of the praecipe for the writ. If the joining party fails to file [ his ] the complaint within the required time, the plaintiff or the additional defendant joined may seek a rule to file the complaint and an eventual judgment of non pros in the manner provided by Rule 1037(a) for failure to file a complaint.

\* \* \* \* \*

(c) The writ to join an additional defendant shall be directed to [ him ] the additional defendant and shall be substantially in the following form:

\* \* \* \* \*

(d) If the person sought to be joined is a party, the joining party shall, without moving for severance or the filing of a praecipe for a writ or a complaint, assert in [ his ] the answer as new matter that such party is alone liable to the plaintiff or liable over to the joining party or jointly or severally liable to the plaintiff or liable to the joining party directly setting forth the ground therefor. The case shall proceed thereafter as if such party had been joined by a writ or a complaint.

**Rule 2255. Procedure.**

\* \* \* \* \*

(b) No pleadings shall be filed between the additional defendant and any party other than the one joining [ him ] the additional defendant except that the additional defendant may file a counterclaim against the plaintiff.

(c) No judgment on the pleadings may be entered in favor of any party against an additional defendant for failure to answer the complaint of the party joining [ him ] the additional defendant, but all allegations of fact in such complaint to which an answer is required and which are not sufficiently answered shall be conclusive upon the additional defendant.

(d) The plaintiff shall recover from an additional defendant found liable to [ him ] the plaintiff alone or jointly with the defendant as though such additional defendant had been joined as a defendant and duly served and the initial pleading of the plaintiff had averred such liability.

**CHAPTER 2300. INTERPLEADER BY DEFENDANTS**

**Rule 2303. Allegations required in petition; stay of proceedings.**

(a) The petition for interpleader shall allege

\* \* \* \* \*

(3) the interest, if any, which the defendant claims in the money or property in controversy and whether [ he ] the defendant is able (or if not, the reasons therefor) to pay or deliver that part of the money or property as to which he or she claims no interest into court or to such person as the court may direct.

(4) whether [ he ] the defendant has admitted the claim of, or subjected himself or herself to independent liability to, the plaintiff or any claimant in respect to the subject matter of the action.

\* \* \* \* \*

**Rule 2304. Order of court.**

The petition shall be accompanied by a form of order of the court substantially as follows:

**(Caption of the Action)  
Commonwealth of Pennsylvania**

Now, this \_\_\_\_ day of \_\_\_\_ [ A.D. ], \_\_\_\_, the petition of \_\_\_\_\_ (insert name of party seeking interpleader) is granted and \_\_\_\_\_ (insert name of the claimant not a party to the action) is added to the record as a party plaintiff and enjoined from commencing or further prosecuting any action in any court against \_\_\_\_\_ (the petitioner) to enforce in whole or in part any claim against [ him ] the petitioner set forth in said petition, except as a party to the above entitled action.

Now, therefore, we command you, the Sheriff of the County of \_\_\_\_\_ to direct the claimant, \_\_\_\_\_ (insert name and address of the claimant [ and his address ]) to file in the above entitled action in the office of the \_\_\_\_\_ (insert title of officer and court) a complaint within twenty days after being served with copies of the petition for interpleader and this order and all pleadings heretofore filed in the above entitled action if said service was made within your county, or

within thirty days of said service if said service was made within any other county of this Commonwealth.

By the court  
\_\_\_\_\_, J.

**Rule 2305. Service on and answer of plaintiff.**

(a) A copy of the petition shall be served upon the plaintiff or **[ his ] the plaintiff's** attorney.

(b) The plaintiff's answer, if any, to the petition shall be filed within twenty days of such service and a copy thereof shall be served upon the defendant or **[ his ] the defendant's** attorney.

**Rule 2306. Action of court on petition.**

(a) The court shall direct an interpleader if the petition is in conformity with these rules and the allegations thereof are established either by proof or by the failure of the plaintiff to file a sufficient answer; but the court may deny the petition if the defendant

(1) has unreasonably delayed in filing the petition, or

(2) has admitted the claim of, or subjected himself or herself to independent liability to, the plaintiff or any claimant, with knowledge that an inconsistent claim would be later asserted against him or her by any known or unknown person.

\* \* \* \* \*

(c) The court shall not deny the petition merely because

(1) the defendant has an interest in the action or asserts that he or she is not liable in whole or in part to any or all of the claimants and the plaintiff;

\* \* \* \* \*

**Rule 2307. Order for payment; delivery or sale of property; effect of compliance therewith.**

\* \* \* \* \*

(b) When the defendant has complied with such order, the court shall enter an order discharging **[ him ] the defendant** of all liability to the plaintiff and to any interpleaded claimant who has been served as required by these rules in respect to the money or property so paid or delivered. If the defendant has disclaimed all interest in the action the court in its order shall also discharge **[ him ] the defendant** from all liability for any costs accruing after the entry of the order and shall allow **[ him ] the defendant** the costs incurred by him or her in the action, to be paid from such money or property in the first instance and taxed as costs in the action.

\* \* \* \* \*

**Rule 2308. Service of process on interpleaded claimants.**

\* \* \* \* \*

(b) A copy of such order shall be served upon the plaintiff or **[ his ] the plaintiff's** attorney.

\* \* \* \* \*

**Rule 2309. Claimant's statement of claim; service thereof.**

(a) Within the time required by the order, each claimant interpleaded shall file a statement of **[ his ]** claim

against the defendant and any money or property paid or delivered by said defendant pursuant to an order of the court.

\* \* \* \* \*

(c) Following the allegations relating to **[ his ] the** claim against the defendant, the interpleaded claimant may include in his or her statement, under the heading of "Additional Matter" any allegations relevant to the claim of any other claimant or party.

(d) A copy of the statement shall be served upon the plaintiff, and any other interpleaded claimant and upon the defendant if **[ he ] the defendant** has not disclaimed all interest in the action.

**Rule 2310. Answers by defendant, plaintiff and other claimants.**

(a) **[ The ] A** defendant, **[ if he ] who** has not disclaimed all interest in the action, may within twenty days after service of a claimant's statement, file **[ his ] an** answer thereto, except to any "Additional Matter" thereof.

\* \* \* \* \*

**Rule 2316. Recovery of property and execution.**

The party to the interpleader ultimately found entitled to recover shall be entitled to payment or delivery of money or property awarded **[ him ]** under Rule 2315 and to execution upon any judgment entered in his or her favor against any party to the interpleader although an interpleaded claimant has not been served as required by Rule 2308.

**CHAPTER 2320. INTERVENTION**

**Rule 2327. Who may intervene.**

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if

\* \* \* \* \*

(4) the determination of such action may affect any legally enforceable interest of such person whether or not **[ he ] such person** may be bound by a judgment in the action.

**Rule 2328. Petition to intervene.**

(a) Application for leave to intervene shall be made by a petition in the form of and verified in the manner of a plaintiff's initial pleading in a civil action, setting forth the ground on which intervention is sought and a statement of the relief or the defense which the petitioner desires to demand or assert. The petitioner shall attach to the petition a copy of any pleading which **[ he ] the petitioner** will file in the action if permitted to intervene or shall state in the petition that **[ he ] the petitioner** adopts by reference in whole or in part certain named pleadings or parts of pleadings already filed in the action.

\* \* \* \* \*

**Rule 2330. Practice.**

\* \* \* \* \*

(b) Any party to the action may amend any pleading filed by **[ him ] the party** to include any claim or defense available against an intervening party.

**CHAPTER 2350. SUBSTITUTION OF PARTIES**

**Rule 2351. Definitions.**

\* \* \* \* \*

**Official Note:** See Rule 2004 governing the substitution of a person to whom a voluntary transfer is made. See also **the following rules governing the removal of a particular party and substitution of a successor:** Rule 2033, [ **Minors as parties** ] (guardian of a minor), [ **and** ] Rule 2060, [ **Incompetents as parties, governing the removal of an ad litem fiduciary and the substitution of a successor** ] (guardian ad litem of an incapacitated person), and Rule 2203, [ **governing the removal and substitution of plaintiffs in an action for wrongful death** ] (plaintiffs in an action for wrongful death).

**Rule 2352. Substitution of successor.**

\* \* \* \* \*

(b) If the successor does not voluntarily become a party, the prothonotary, upon praecipe of an adverse party setting forth the material facts shall enter a rule upon the successor to show cause why [ **he** ] **the successor** should not be substituted as a party.

**Rule 2354. Status of successor; continuance.**

If the successor voluntarily becomes a party to the action or the rule is made absolute, [ **he** ] **the successor** shall have all the rights and liabilities of a party to the action. The court may order such continuances and extensions as may be necessary to afford [ **him** ] **the successor** a reasonable opportunity to appear and prosecute or defend the action.

**CHAPTER 2980. STATUTORY ACTION TO CONFORM CONFESSED JUDGMENT**

**Rule 2984. Complaint.**

The complaint shall include:

(1) the names of the parties to the confessed judgment which is the subject matter of the action and the court [ **, term** ] and number, and the date and amount thereof;

\* \* \* \* \*

**Explanatory Comment**

The 1999 technical amendments to the rules of civil procedure accomplish three purposes. First, the rules are made gender neutral. For example, rules which contained references to "he" have been revised by substituting the phrase "he or she" or by replacing the pronoun with the original noun, e.g., "the deponent."

Second, there are a few rules containing forms which are revised by eliminating the date reference to the 1900's in light of the turn of the century. For example, the form of order contained in Rule 206.5 governing petitions formerly began, "AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 199\_ . . ." The form is amended by substituting a blank line in place of "199\_."

Third, the rules have been inconsistent in the use of a word or a word and numeral to represent a number. For example, one rule might refer to "ten days" while another rule referred to "ten (10)" days. The rules are revised to use numerical representation by word only, e.g., "ten days." The use of a word and numeral remains only in forms such as the notice to plead prescribed by Rule 1361

which directs a party to file a response "within twenty (20) days from service hereof . . ."

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chair*

[Pa.B. Doc. No. 99-695. Filed for public inspection April 30, 1999, 9:00 a.m.]

**PART I. GENERAL**

**[231 PA. CODE CHS. 3000 AND 4000]**

**Technical Amendment of Rules of Civil Procedure 3101—4020; No. 312, Doc. No. 5**

**Order**

*Per Curiam:*

*And Now,* this 12th day of April, 1999, the Pennsylvania Rules of Civil Procedure are amended as follows:

Rules 3101, 3105, 3106, 3109, 3110, 3111, 3112, 3118, 3121, 3123, 3126, 3128, 3129.2, 3133, 3136, 3137, 3139, 3140, 3141, 3143, 3144, 3145, 3165, 3170, 3182, 3201, 3204, 3205, 3206, 3207, 3252, 3253, 3255, 4003.3, 4003.5, 4004, 4007.1, 4007.2, 4007.4, 4008, 4014, 4015, 4017, 4017.1, 4019, 4020 are amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1999.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 3000. JUDGMENTS**

**Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY**

**Rule 3101. Definitions; garnishee.**

\* \* \* \* \*

(b) Any person may be a garnishee and shall be deemed to have possession of property of the defendant if [ **he** ] **the person**

- (1) owes a debt to the defendant;
- (2) has property of the defendant in his **or her** custody, possession or control;

\* \* \* \* \*

**Rule 3105. Writ; notation of time of receipt.**

The sheriff shall note on the writ the date and time when [ **he receives** ] **it is received.**

**Rule 3106. Substitution, reissuance and expiration of writ.**

\* \* \* \* \*

(d) A writ shall not be served nor shall a levy or attachment be made thereunder after the expiration of ninety [ **(90)** ] days from the date of issuance or reissuance. After levy or attachment has been made under the writ within the ninety [ **(90)** ] -day period it shall remain valid without further reissuance for the purpose of completing the pending execution proceedings under the levy or attachment.

**Rule 3109. Manual possession; retention of possession.**

(a) The sheriff may, or at the direction of the plaintiff shall, take manual possession or custody of any tangible personal property of the defendant upon which [ he ] the sheriff has made a levy.

\* \* \* \* \*

(c) If the sheriff does not retain possession of the property taken, [ he shall return ] it shall be returned to the person from whom it was taken.

\* \* \* \* \*

**Rule 3110. Execution against contents of safe deposit box.**

\* \* \* \* \*

(c) The court, on petition of the plaintiff, shall grant a rule on the defendant, the depository or custodian, and any person who has the right to open the box, to show cause why the box should not be opened in the presence of the sheriff, by force if necessary, and the property of the defendant found therein delivered to the sheriff. If the defendant, the depository or custodian, or a person who has the right to open the box cannot be served personally with the petition and rule, [ he ] that person shall be served by sending [ him ] a copy of the petition and rule by registered mail directed to his or her last known address or, if no address is known and an affidavit to that effect is filed, by publication in such manner as the court by local rule or special order shall direct.

\* \* \* \* \*

**Rule 3111. Service of the writ on garnishee; effect.**

\* \* \* \* \*

(b) Service of the writ upon the garnishee shall attach all property of the defendant which may be attached under these rules which is in the possession of the garnishee. It shall also attach all property of the defendant which may be attached under these rules and which comes into the garnishee's possession thereafter until judgment against [ him ] the garnishee even though no such property of the defendant was in [ his ] the garnishee's possession at the time of service.

(c) Service of the writ upon the garnishee shall also subject [ him ] the garnishee to the mandate and injunctive orders of the writ restraining [ him ] the garnishee from paying any debt to or for the account of the defendant and from delivering any property of the defendant which may be attached under these rules to anyone except the sheriff or otherwise disposing thereof until further order of the court or discontinuance or termination of the attachment.

\* \* \* \* \*

**Rule 3112. Service of the writ upon garnishee; real property of defendant in name of third party.**

(a) The sheriff shall execute the writ against real property of the defendant, title to which is recorded in the name of a third party, by serving the third party as garnishee and noting upon the writ a description of the real property and a statement that [ he ] the sheriff has levied upon defendant's interest therein.

\* \* \* \* \*

(c) [ If the ] A garnishee who cannot be served as provided in Rules 3111(a) or 3112(b)[, he ] shall be

served by (1) posting a copy of the writ on a public part of the property and (2) handing a copy of the writ to the person in actual possession of the property or, if no one is in actual possession, by sending the garnishee a copy of the writ together with an inventory of the property attached, by registered mail directed to [ his ] the garnishee's last known address or, if no address is known and an affidavit to that effect is filed, by publication in such manner as the court by special order shall direct.

**Rule 3118. Supplementary relief in aid of execution.**

\* \* \* \* \*

**Official Note: Service of a writ of execution against a garnishee enjoins the garnishee as provided in Rule 3111 but supplementary aid may be obtained under this rule against any party or person without the necessity of separate proceedings in equity in aid of execution.**

**Rule 3121. Stay of execution; setting aside execution.**

\* \* \* \* \*

(e) All objections by the defendant shall be raised at one time.

**Official Note:** The garnishee may however raise the defenses of exemption or immunity of property from execution by preliminary objection or in [ his ] answers to interrogatories. See Rules 3142(a) and (c) and 3145(b).

\* \* \* \* \*

**Rule 3123. Debtor's exemption.**

(a) A defendant entitled to a statutory exemption may claim it in kind or in cash at any time before the date of sale by notifying the sheriff of his or her claim and, if the exemption is claimed in kind, by designating the property which he or she elects to retain as exempt. Failure of the defendant to claim [ his ] the statutory exemption shall not constitute a waiver thereof.

**Official Note:** See *Mayhugh v. Coon*, 460 Pa. 128, 331 A.2d 452 (1975).

(b) Upon receipt of a claim for exemption in kind the sheriff shall set aside, from the designated property, enough thereof as appraised by [ him ] the sheriff, to equal the value of the exemption, unless the property is incapable of division. In the event of failure of the defendant to claim [ his ] the statutory exemption, the sheriff shall similarly choose, appraise, and set aside property in kind. Real property claimed shall be described by metes and bounds and the description shall be included in the sheriff's return.

(c) If the property held by the sheriff in kind cannot be set aside [ property in kind ] because [ the property in his hands ] it is not capable of appropriate division, [ he ] the sheriff shall set aside from the proceeds of the sale and pay to the defendant in cash the amount of [ his ] the statutory exemption.

\* \* \* \* \*

**Rule 3126. Sale of inventory in course of trade.**

Merchandise, inventory, or stock in trade of a defendant engaged in trade or business may, after levy, be sold by the defendant for cash in the ordinary course of trade or business if the plaintiff shall consent by writing directed to the sheriff. If the sheriff [ has in his hands ] holds writs of more than one plaintiff against the defendant, all



the plaintiffs must consent in writing to the sale. The sale shall be under the supervision of the sheriff. The proceeds of sale shall be immediately collected by or delivered to the sheriff until all writs **[ in his hands ] held by the sheriff** against the defendant are satisfied. Any plaintiff may withdraw his **or her** consent at any time.

**Rule 3128. Notice of sale; personal property.**

\* \* \* \* \*

(b) The notice of sale shall include a notice that all claims to the property must be filed with the sheriff before sale and all claims to the proceeds before distribution; that a sheriff's schedule of distribution will be filed in **[ his ] the sheriff's** office on a date specified by **[ him ] the sheriff**, not later than five **[ (5) ]** days after sale; and that distribution will be made in accordance with the schedule unless exceptions are filed within ten **[ (10) ]** days thereafter. No further notice of the filing of the schedule of distribution need be given.

\* \* \* \* \*

**Rule 3129.2. Notice of sale; handbills; written notice; publication.**

\* \* \* \* \*

(b) The handbills shall be posted by the sheriff in **[ his ] the sheriff's** office and upon the property at least thirty days before the sale, and shall include

\* \* \* \* \*

**Rule 3133. Lien creditor as purchaser.**

Whenever real or personal property sold on execution is purchased by the plaintiff or any other lien creditor entitled to receive all or part of the proceeds of the sale, the sheriff upon proof of that fact shall accept on account of the purchase price the receipt of the purchaser up to the amount of the proceeds to which **[ he ] the purchaser** is entitled. The sheriff may require payment in cash of all legal costs distributable from the proceeds of the sale.

**Rule 3136. Distribution of proceeds.**

(a) Not later than thirty **[ (30) ]** days after the sale of real property and not later than five **[ (5) ]** days after the sale of personal property, the sheriff shall prepare a schedule of proposed distribution of the proceeds of sale which shall be kept on file and shall be available for inspection in **[ his ] the sheriff's** office. No schedule of distribution or list of liens need be filed when the property is sold to the plaintiff for costs only.

(b) When a receipt of the plaintiff or other lien creditor has been accepted on account of the purchase price, the schedule shall set forth **[ his ] the** name and address of **the plaintiff or lien creditor**, the amount of **[ his ] the** judgment or lien, identifying it, and the amount of credit claimed and allowed upon the purchase price.

(c) In sales of real property the sheriff shall attach to the schedule a list of liens upon the property sold as certified **[ to him ]** from the record by the proper officers or a guaranteed search from any title company authorized to do business within the county. The cost of certifying the list of liens or the title search, the acknowledgment, recording and registry of the deed and transfer or documentary stamps shall be charged as an expense of distribution.

(d) The sheriff shall distribute the proceeds of sale in accordance with the proposed schedule of distribution, unless written exceptions are filed with **[ him ] the sheriff** not later than ten (10) days after the filing of the proposed schedule.

(e) Upon the filing of exceptions, **[ with ]** the sheriff **[ he ]** shall transmit them to the prothonotary together with a copy of the proposed schedule of distribution.

\* \* \* \* \*

(h) If the sheriff receives any money for costs or in connection with a stay, adjournment or postponement of sale or otherwise, **[ he ] the sheriff** shall account for it on returning the writ.

**Rule 3137. Priority of distribution as between competing plaintiffs.**

\* \* \* \* \*

(b) When property is attached by service upon the garnishee of two or more writs of separate plaintiffs, priority of distribution between them shall be determined by the date of service of their respective writs upon the garnishee as to all property then in the hands of the garnishee or coming into **[ his ] the garnishee's** possession up to time of judgment against **[ him ] the garnishee**.

\* \* \* \* \*

**Rule 3139. Sheriff's return.**

\* \* \* \* \*

(d) If real property is sold by the sheriff under a writ of execution from another county, a copy of the sheriff's return shall also be filed by **[ him ] the sheriff** with the prothonotary of the county in which the real property is located.

**Rule 3140. Notice by garnishee.**

\* \* \* \* \*

(b) Upon filing **[ his ]** answers to interrogatories the garnishee shall promptly forward a copy to the defendant.

(c) A copy is forwarded within the requirement of this rule when it is delivered to the defendant by a competent adult at any place within or without the Commonwealth in the manner prescribed by Rule 402(a) for service of original process or when it is mailed to the defendant by registered mail directed to **[ his ] the defendant's** last known address.

**Rule 3141. Garnishee's duty to defend; venue of proceedings.**

(a) **[ If the ] A** garnishee **who** forwards copies of the writ and **[ his ]** answers to interrogatories to the defendant, **[ he ]** shall thereafter be under no duty to resist the attachment or defend the action against the defendant in any manner but may do so as provided by these rules.

(b) When the writ is issued to another county, preliminary objections, proceedings for stay, or release of property from attachment, answers to interrogatories, or other matters relating to the attachment, may at the option of the garnishee be filed or taken by **[ him ] the garnishee** in the county to which the writ is directed or from which it issued. If filed or taken in the county to which the writ is directed, copies thereof and any order of the court thereon shall also be forwarded to the prothonotary of the

county in which the writ issued, and to the plaintiff and the defendant or their attorneys, and shall contain or have attached an election of optional venue in the garnishee county. A copy is forwarded within the meaning of this rule if it is sent in the manner provided by Rule 3140(c).

**Rule 3143. Dissolution of attachment; release of property; bond.**

\* \* \* \* \*

(b)(1) An attachment is dissolved when any person or party

\* \* \* \* \*

(ii) deposits with the prothonotary, or with the sheriff for the prothonotary, to be held by [ him ] the prothonotary or the sheriff upon the same condition as the bond, security in the form of legal tender of the United States in an amount equal to the plaintiff's judgment, including probable interest and costs, or in such lesser amount as the court may direct.

\* \* \* \* \*

(c) Specific property is released without dissolving the attachment when any person or party gives bond or security, as provided by Subdivision (b) of this rule, in an amount based upon the value of the property to be determined by the court, and conditioned to pay the plaintiff the amount of [ his ] the final judgment against the defendant or the value of the property released, whichever is less.

\* \* \* \* \*

(f) The prothonotary, on praecipe of the garnishee or defendant, shall enter a rule on the plaintiff to file interrogatories. If the plaintiff fails to comply with the rule within twenty [ (20) ] days after service, the prothonotary, upon praecipe of the garnishee, shall enter judgment of non pros against the plaintiff and in favor of the garnishee, which shall dissolve the attachment as to the garnishee.

(g) At any time after the filing of answers to the interrogatories and service of a copy upon the plaintiff, the prothonotary, on praecipe of the garnishee, shall enter a rule on the plaintiff to (1) seek judgment against the garnishee under Rule 3146(b) or (2) place the issue between the plaintiff and garnishee upon the list for trial. If the plaintiff fails to comply with the rule within twenty [ (20) ] days after service, the prothonotary, on praecipe of the garnishee, shall enter judgment of non pros against the plaintiff in favor of the garnishee, which shall dissolve the attachment as to the garnishee.

\* \* \* \* \*

**Rule 3144. Interrogatories to garnishee.**

(a) The plaintiff may, at the time of issuance of the writ or thereafter, file and serve interrogatories directed to the garnishee respecting property of the defendant in [ his ] the garnishee's possession. The plaintiff in [ his ] the interrogatories may require the garnishee to include in [ his ] the answer, so far as relevant, the names and addresses of persons taking part in any transaction, the specific amount of any debt, the value and location of any property and the nature and amount of consideration given for any transfer of property.

(b) The interrogatories shall contain a notice to answer within twenty [ (20) ] days after service.

**Rule 3145. Interrogatories; procedure.**

\* \* \* \* \*

(b) The garnishee in [ his ] the answer under "new matter" may include

(1) the defenses of the immunity or exemption of property;

(2) any defense or counterclaim which [ he ] the garnishee could assert against the defendant if sued by [ him ] the defendant but [ he ] the garnishee may not assert any defense on behalf of the defendant against the plaintiff or otherwise attack the validity of the attachment;

(3) any claim which [ he ] the garnishee could assert against the plaintiff if sued by [ him ] the plaintiff.

**Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS  
ACTION OF EJECTMENT**

**Rule 3165. Reentry by defendant; new writ of possession.**

After execution and return of the writ, if the defendant shall reenter into possession, the prothonotary, upon praecipe and affidavit setting forth the facts, filed within three [ (3) ] years after the return of the writ on which execution was completed, shall issue a new writ of possession.

**ACTIONS OF REPLEVIN**

**Rule 3170. Judgment; enforcement.**

(a) If judgment is entered for the party in possession, [ he ] that party may recover [ his ] damages and costs by execution or by recovery upon the bond.

(b) If judgment is entered for a party not in possession, [ he ] that party may obtain [ the ] possession of the property by a writ of possession, or in the alternative may obtain the value of the property by execution on the judgment or by recovery upon the bond. In any case, [ he ] the party may recover [ his ] damages and costs by execution or by recovery upon the bond.

**ACTION OF MORTGAGE FORECLOSURE**

**Rule 3182. Service of writ; levy.**

Service of the writ shall be made by the sheriff noting upon the writ a brief description of the mortgaged property and a statement that [ he ] the sheriff has levied upon defendant's interest therein.

**SHERIFF'S INTERPLEADER**

**Rule 3201. Scope.**

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

These rules do not apply where tangible property is attached under Rule 3108(a) rather than levied upon. If the garnishee [ himself ] claims the property [ he ] the garnishee may interplead under Rules 2301 et seq. If an outside person claims the property, [ he ] such person may intervene in the [ garnishee ] garnishment proceedings or the garnishee may defend the attachment by asserting the outside person's title and denying that [ he ] the garnishee holds any property of the defendant.

**Rule 3204. Sheriff's determination of claimant's title.**

Within ten [ (10) ] days after the claim is filed the sheriff shall, with or without formal hearing, determine whether the claimant is prima facie the owner of the property in whole or in part.

**Rule 3205. Appraisal of property; appraisal fees.**

(a) Unless a party in interest files a request for appraisal with the sheriff within ten [ (10) ] days after the date specified in the sheriff's notice, the sheriff without making an appraisal shall accept the value of the property set forth in the claim.

\* \* \* \* \*

**Rule 3206. Sheriff's determination in favor of claimant; objections; amount of bond; delivery of property; interpleader.**

\* \* \* \* \*

(b) Any execution creditor or defendant may, within ten [ (10) ] days after the date of mailing of the copy of the determination and valuation, file with the prothonotary, and with the sheriff an objection to the determination substantially in the form provided by Rule 3260. The sheriff shall send by ordinary mail a copy of the objection to all other parties. Upon the filing of the objection an interpleader shall be at issue in which the claimant shall be the plaintiff and all other parties in interest shall be defendants. The only pleading shall be the claim, all averments of which shall be deemed to be denied.

\* \* \* \* \*

(e) If an execution creditor or a defendant files an objection, the claimed property shall remain subject to the levy unless the claimant within ten [ (10) ] days from the filing of the objection files a bond as provided in Rules 3207(d) and 3208, in which event the sheriff shall withdraw all levies on the claimed property and deliver the same as provided in Rule 3207(d).

**Rule 3207. Sheriff's determination against claimant; objection; amount of bond; delivery of property; interpleader.**

\* \* \* \* \*

(b) The claimant may, within ten [ (10) ] days after the date of the mailing of the copy of the determination and valuation, file with the prothonotary and with the sheriff an objection to the determination substantially in the form provided by Rule 3260, with or without bond. The sheriff shall send by ordinary mail a copy of the objection to all other parties. Upon the filing of the objection an interpleader shall be at issue in which the claimant shall be the plaintiff and all other parties in interest shall be defendants. The only pleading shall be the claim, all averments of which shall be deemed to be denied.

\* \* \* \* \*

**FORMS**

**Rule 3252. Writ of execution; money judgments.**

\* \* \* \* \*

**Official Note:**

\* \* \* \* \*

Under paragraph (2) of the writ, if attachment of a named garnishee is desired, [ his ] the garnishee's name should be set forth in the space provided.

\* \* \* \* \*

**Rule 3253. Interrogatories in attachment.**

Interrogatories of the plaintiff to the garnishee shall be substantially in the following form:

[Caption]

"To \_\_\_\_\_ :  
(Garnishee)

"You are required to file answers to the following interrogatories within twenty (20) days after service upon you. Failure to do so may result in judgment against you:

"1. At the time you were served or at any subsequent time did you owe the defendant any money or were you liable to [ him ] the defendant on any negotiable or other written instrument, or did [ he ] the defendant claim that you owed [ him ] the defendant any money or were liable to [ him ] the defendant for any reason?

\* \* \* \* \*

"6. At any time after you were served did you pay, transfer or deliver any money or property to the defendant or to any person or place pursuant to [ his ] the defendant's direction or otherwise discharge any claim of the defendant against you?"

\* \* \* \* \*

**Rule 3255. Writ of possession.**

The writ of possession shall be substantially in the following form:

\* \* \* \* \*

"(2) To satisfy the costs against \_\_\_\_\_ you are directed to levy upon any property of \_\_\_\_\_ and sell his or her interest therein.

\* \* \* \* \*

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY**

**Rule 4003.3. Scope of Discovery. Trial Preparation Material Generally.**

Subject to the provisions of Rules 4003.4 and 4003.5, a party may obtain discovery of any matter discoverable under Rule 4003.1 even though prepared in anticipation of litigation or trial by or for another party or by or for that other party's representative, including his or her attorney, consultant, surety, indemnitor, insurer or agent. The discovery shall not include disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery shall not include disclosure of his or her mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy or tactics.

**Rule 4003.5. Discovery of Expert Testimony. Trial Preparation Material.**

(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(1) A party may through interrogatories require

(a) \* \* \*

(b) the other party to have each expert so identified [ by him ] state the substance of the facts and opinions to which the expert is expected to testify and a summary

of the grounds for each opinion. The party answering the interrogatories may file as his or her answer a report of the expert or have the interrogatories answered by [ his ] the expert. The answer or separate report shall be signed by the expert.

\* \* \* \* \*

(b) [ If the identity of an expert witness is not disclosed ] An expert witness whose identity is not disclosed in compliance with subdivision (a)(1) of this rule[ , he ] shall not be permitted to testify on behalf of the defaulting party at the trial of the action. However, if the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the court may grant a continuance or other appropriate relief.

(c) To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings under subdivision (a)(1) or (2) of this rule, [ his ] the direct testimony of the expert at the trial may not be inconsistent with or go beyond the fair scope of his or her testimony in the discovery proceedings as set forth in [ his ] the deposition, answer to an interrogatory, separate report or supplement thereto. However, [ he ] the expert shall not be prevented from testifying as to facts or opinions on matters on which [ he ] the expert has not been interrogated in the discovery proceedings.

**Rule 4004. Procedure on Depositions by Written Interrogatories.**

(a)(1) A party taking a deposition by written interrogatories shall serve a copy of the interrogatories upon each party or [ his ] the attorney of record of each party. Within thirty days thereafter the party so served may serve cross interrogatories upon each party or [ his ] the attorney of record of each party. Subsequent interrogatories shall be similarly served within ten days.

(2) The interrogatories shall contain a notice stating the name or descriptive title and address of the officer before whom the deposition is to be taken, the time and place of taking the deposition and the name and address of each person to be examined if known, and, if the name is not known, a general description sufficient to identify [ him ] each person to be examined or the particular class or group to which [ he ] each person belongs. A deposition upon written interrogatories may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 4007.1(e).

\* \* \* \* \*

(c) A copy of all interrogatories for the taking of a deposition shall be transmitted to the person designated to take the deposition, who shall promptly give notice to the witness and thereafter propound the interrogatories to [ him ] the witness and complete, certify and send [ it ] the deposition by registered mail to the party taking the deposition, attaching thereto the copy of the interrogatories.

(d) When the deposition is received by the party taking the deposition, [ he ] the party shall promptly give notice thereof to all other parties.

\* \* \* \* \*

**Rule 4007.1. Procedure in Deposition by Oral Examination**

\* \* \* \* \*

(b) The notice shall conform with the requirements of subdivision (c) of this rule and of Rule 4007.2(b) and (c) where appropriate and shall state the time and place of taking the deposition and the name and address of each person to be examined if known, and, if the name is not known, a general description sufficient to identify [ him ] the deponent or the particular class or group to which [ he ] the deponent belongs.

\* \* \* \* \*

(e) A party may in [ his ] the notice and in a subpoena, if issued, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters to be inquired into and the materials to be produced. In that event, the organization so named shall serve a designation of one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which [ he ] each person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The person or persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (e) does not preclude taking a deposition by any other procedure authorized in these rules.

\* \* \* \* \*

**Rule 4007.2. When Leave of Court Required.**

\* \* \* \* \*

(b) Leave of court must be obtained if a plaintiff's notice schedules the taking of a deposition prior to the expiration of [ (30) ] thirty days after service of the original process and the defendant has not served a notice of taking a deposition or otherwise sought discovery, unless the party or person to be examined is

- (1) aged or infirm, or
- (2) about to leave the county in which the action is pending for a place outside the Commonwealth or a place more than [ (100) ] one hundred miles from the courthouse in which the action is pending.

(c) If the plaintiff proceeds under subdivision (b)(1) or (2) of this rule the notice of taking the deposition shall set forth the facts which support taking it without leave of court. The plaintiff's attorney shall sign the notice and [ his ] this signature shall constitute a certification [ by him ] that to the best of [ his ] the attorney's knowledge, information and belief the statement of facts is true.

\* \* \* \* \*

**Rule 4007.4. Supplementing Responses.**

A party or an expert witness who has responded to a request for discovery with a response that was complete when made is under no duty to supplement [ his ] the response to include information thereafter acquired, except as follows:

- (1) A party is under a duty seasonably to supplement [ his ] the response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at trial, the subject matter on which [ he ] each person is expected to testify and the substance of [ his ] each person's testimony as provided in Rule 4003.5(a)(1).

(2) A party or an expert witness is under a duty seasonably to amend a prior response if he or she obtains information upon the basis of which he or she knows that

(a) [ he knows that ] the response was incorrect when made, or

(b) [ he knows that ] the response though correct when made is no longer true.

\* \* \* \* \*

**Rule 4008. Oral Examination. Limitation.**

If a deposition is to be taken by oral examination more than [ (100) ] one hundred miles from the courthouse, the court upon motion may make an order requiring the payment of reasonable expenses, including attorney's fees, as the court shall deem proper.

**PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY FOR INSPECTION AND OTHER ACTIVITIES**

**ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES**

**Rule 4014. Request for Admission.**

\* \* \* \* \*

(b) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission an answer verified by the party or an objection, signed by the party or by [ his ] the party's attorney; but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the original process upon him or her. If objection is made, the reasons therefor shall be stated. The answer shall admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify [ his ] the answer or deny only a part of the matter of which an admission is requested, [ he ] the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless [ he ] the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. [ He ] That party may, subject to the provisions of Rule 4019(d), deny the matter or set forth reasons why he or she cannot admit or deny it.

\* \* \* \* \*

(d) Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 212.3 governing pre-trial conferences, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining [ his ]

the action or defense on the merits. Any admission by a party under this rule is for the purpose of the pending action only and is not an admission by [ him ] the party for any other purpose nor may it be used against [ him ] the party in any other proceeding.

**Rule 4015. Persons Before Whom Depositions May be Taken.**

\* \* \* \* \*

(b) In a foreign country, depositions may be taken

\* \* \* \* \*

(2) before a person commissioned by the court in which the action is pending, and a person so commissioned shall have the power by virtue of [ his ] the commission to administer any necessary oath and take testimony, or

\* \* \* \* \*

**Rule 4017. Transcript of Testimony. Objections. Filing.**

(a) The person before whom the deposition is taken shall put the witness on oath or affirmation and shall personally or by someone acting under his or her direction and in his or her presence record the testimony of the witness.

\* \* \* \* \*

(c) When the testimony is fully transcribed a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by [ him ] the witness and shall be signed by [ him ] the witness, unless the inspection, reading and signing are waived by the witness and by all parties who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within [ (30) ] thirty days of its submission to [ him ] the witness, the person before whom the deposition was taken shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(d) The person before whom the deposition is taken shall certify on the deposition that the witness was duly sworn [ by him ] and that the deposition is a true record of the testimony given by the witness.

\* \* \* \* \*

**Rule 4017.1. Videotape Depositions**

\* \* \* \* \*

(b) Every notice or subpoena for the taking of a videotape deposition shall state

\* \* \* \* \*

(5) the name and address of the videotape operator and of his or her employer. The operator may be an employee of the attorney taking the deposition.

(c) The deposition shall begin by the operator stating on camera (1) his or her name and address, (2) the name and address of his or her employer, (3) the date, time

and place of the deposition, (4) the caption of the case, (5) the name of the witness, and (6) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself or herself and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced on camera by the operator.

\* \* \* \* \*

**Rule 4019. Sanctions.**

(a)(1) The court may, on motion, make an appropriate order if

\* \* \* \* \*

(iv) a party or an officer, or managing agent of a party or a person designated under Rule 4007.1(e) to be examined, after notice under Rule 4007.1, fails to appear before the person who is to take **[ his ]** the deposition;

\* \* \* \* \*

(vi) a party or an officer, or managing agent of a party refuses or induces a person to refuse to obey an order of court made under subdivision (b) of this rule requiring **[ him ] such party or person** to be sworn or to answer designated questions or an order of court made under Rule 4010;

\* \* \* \* \*

(c) The court, when acting under subdivision (a) of this rule, may make

\* \* \* \* \*

(2) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting **[ him ] such party** from introducing in evidence designated documents, things or testimony, or from introducing evidence of physical or mental condition;

\* \* \* \* \*

(d) If at the trial or hearing, a party who has requested admission as authorized by Rule 4014 proves the matter which the other party has failed to admit as requested, the court on motion may enter an order taxing as costs against the other party the reasonable expenses incurred in making such proof, including attorney's fees, unless the court finds that

\* \* \* \* \*

(3) the party failing to admit had reasonable ground to believe that he **or she** might prevail on the matter, or

\* \* \* \* \*

(e) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by **[ him ] such other party** and his **or her** attorney in so attending, including attorney's fees.

(f) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon **[ him ] the witness** and because of such failure the witness does not attend, and if another party attends in person or by attorney **[ because he expects ] expecting** the deposition of that witness to be taken, the court may

order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by **[ him ] such other party** and his **or her** attorney in so attending, including attorney's fees.

\* \* \* \* \*

**Rule 4020. Use of Depositions at Trial.**

(a) At the trial, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had notice thereof if required, in accordance with any one of the following provisions:

\* \* \* \* \*

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds

(a) that the witness is dead, or

(b) that the witness is at a greater distance than **[ (100) ] one hundred** miles from the place of trial or is outside the Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition, or that the witness is unable to attend or testify because of age, sickness, infirmity or imprisonment, or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may require **[ him ] the offering party** to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

\* \* \* \* \*

(b) Substitution of parties does not affect the right to use depositions previously taken; and, when an action has been dismissed and another action involving the same subject is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken **[ and duly filed ]** in the former action may be used in the latter as if originally taken therein.

\* \* \* \* \*

(d) A party shall not be deemed to make a person his **or her** own witness for any purpose by taking **[ his ] the person's** deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in subdivision (a)(2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by **[ him ] that party** or by any other party.

**Explanatory Comment**

The 1999 technical amendments to the rules of civil procedure accomplish three purposes. First, the rules are made gender neutral. For example, rules which contained references to "he" have been revised by substituting the

phrase "he or she" or by replacing the pronoun with the original noun, e.g., "the deponent."

Second, there are a few rules containing forms which are revised by eliminating the date reference to the 1900's in light of the turn of the century. For example, the form of order contained in Rule 206.5 governing petitions formerly began, "AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_ . . ." The form is amended by the substitution of a blank line in place of "199\_\_ . . ."

Third, the rules have been inconsistent in the use of a word or a word and numeral to represent a number. For example, one rule might refer to "ten days" while another rule referred to "ten (10)" days. The rules are revised to use numerical representation by word only, e.g., "ten days." The use of a word and numeral remains only in forms such as the notice to plead prescribed by Rule 1361 which directs a party to file a response "within twenty (20) days from service hereof. . . ."

*By the Civil Procedural  
Rules Committee*

EDWIN L. KLETT,  
*Chair*

[Pa.B. Doc. No. 99-696. Filed for public inspection April 30, 1999, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

### PART I. GENERAL

#### [234 PA. CODE CH. 1100]

#### Order Amending Rules 1101, 1102 and 1103; No. 240, Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the April 16, 1999 amendments to Rules of Criminal Procedure 1101 (Waiver of Jury Trial), 1102 (Procedure When Jury Trial is Waived), and 1103 (Agreement to be Tried by Fewer Than Twelve Jurors) that conform the rules to the 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides, "In criminal cases, the Commonwealth shall have the same right to trial by jury as does the accused." The Final Report follows the Court's Order.

#### Order

*Per Curiam:*

Now, this 16th day of April 1999, upon the recommendation of the Criminal Procedural Rules Committee; this Recommendation having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), with a Final Report to be published with this Order;

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1101, 1102, and 1103 are amended all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 1999.

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1100. TRIAL

#### Rule 1101. Waiver of Jury Trial.

In all cases, the defendant **and the attorney for the Commonwealth** may waive a jury trial with approval by a judge of the court in which the case is pending, and elect to **[ be tried by a ] have the judge try the case** without a jury. The judge shall ascertain from the defendant whether this is a knowing and intelligent waiver, and such colloquy shall appear on the record. The waiver shall be in writing, made a part of the record, **and** signed by the defendant, **the attorney for the Commonwealth**, the judge, and the defendant's attorney as a witness.

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; amended March 29, 1973, effective 30 days hence; amended November 9, 1984, effective January 2, 1985[.]; **amended April 16, 1999, effective July 1, 1999.**

#### Comment

**[ Heretofore, a defendant charged with murder was not permitted to waive a jury trial; however this Rule eliminates that limitation. ]**

The 1973 amendment ended the proscription, which had formerly appeared in this **[ Rule ] rule**, against waiver of jury trials in capital cases **[ —that is, those in which the Commonwealth refuses to certify that it is not seeking the death penalty ]**. In doing so, the Court has departed from the language expressed, in the absence of specific **[ Rules ] rules** to the contrary, in *Commonwealth v. Petrillo*, **[ 340 Pa. 33, 43, ]** 16 A.2d 50, 56 (Pa. 1949) and *Commonwealth v. Kirkland*, **[ 413 Pa. 48, 53, ]** 195 A.2d 338, 340 (Pa. 1963). **[ The 1973 modification by the Court also deleted the requirement of the approval of the attorney for the Commonwealth. ]**

**The 1999 amendment to this rule embodies the 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides that "the Commonwealth shall have the same right to trial by jury as does the accused."**

**It is intended that when deciding to permit a non-jury trial, the judge should take into account all relevant considerations. When the judge disapproves waiver of jury trial, the judge should state the reasons for its decision on the record. See *Commonwealth v. Boyd*, 467 A.2d 855 (Pa. Super. 1983) and *Commonwealth v. Giaccio*, 457 A.2d 875 (Pa. Super. 1983).**

While this rule continues to require a written waiver of jury trial, the form of the written waiver was deleted in 1985 because it is no longer necessary to control the specific form of written waiver by rule.

**When there are co-defendants, waiver of a jury trial with respect to one or more defendants does not preclude a jury trial for other defendants.**

**Committee Explanatory Reports:**

Final Report explaining the April 16, 1999 amendments concerning the 1998 Constitutional amendment published with the Court's Order at 29 Pa.B. 2290 (May 1, 1999).

**Rule 1102. Procedure when jury trial is waived.**

[ (a) ] (A) When [ a defendant waives ] a jury trial is waived, the trial judge shall determine all questions of law and fact and render a verdict which shall have the same force and effect as a verdict of a jury.

[ (b) ] (B) At any time [ prior to ] before the commencement of trial, [ the defendant may withdraw his ] a waiver of a jury trial or the judge's approval thereof may be withdrawn. [ Thereafter, at any time prior to verdict the trial judge on his own motion may order the withdrawal of such waiver or permit the defendant, upon motion, to withdraw his waiver.

(c) When a trial judge on his own motion orders the withdrawal of a waiver, it shall be without prejudice to the defendant's right once again to waive a jury trial, but if a waiver is withdrawn on the motion of a defendant, no further waiver shall be permitted. ]

Official Note: Adopted January 24, 1968, effective August 1, 1968[ . ]; amended April 16, 1999, effective July 1, 1999.

**Comment**

[ The Act of June 11, 1935, P. L. 319, No. 141, § 2, 19 P. S. § 787 is suspended by this rule. See Rule 1124. ]

The 1999 amendment conforms this rule to the 1998 amendment to article I, § 6 of the Pennsylvania Constitution providing that "the Commonwealth shall have the same right to trial by jury as does the accused."

Paragraph (B) was amended in 1999 to make it clear that the defendant, the attorney for the Commonwealth, or the judge may unilaterally withdraw the jury trial waiver or the approval at any time before the commencement of trial. After commencement of trial, Rule 1118 governs.

Paragraph (c) was deleted in 1999 to permit the defendant and the attorney for the Commonwealth to waive a jury trial with the court's approval, under Rule 1101, even after the withdrawal of a previous jury trial waiver.

When there are co-defendants, withdrawal of a waiver, or withdrawal of the judge's approval, with respect to one or more defendants does not preclude a waiver and non-jury trial for other defendants.

**Committee Explanatory Reports:**

Final Report explaining the April 16, 1999 amendments concerning the 1998 Constitutional amendment published with the Court's Order at 29 Pa.B. 2290 (May 1, 1999).

**Rule 1103. [ Consent ] Agreement to be tried by [ less ] fewer than twelve jurors.**

In all cases, at any time after a jury of twelve is initially sworn and before verdict, the [ defendant

at any time before verdict ] defendant and the attorney for the Commonwealth, with approval of the judge, may agree [ , with the consent of his attorney, and approval by a judge of the court in which the case is pending, ] to [ be tried by ] a jury of [ less ] fewer than twelve but not [ less ] fewer than six. Such [ consent ] agreement shall be made a part of the record. The verdict in such a case shall have the same force and effect as a verdict by a jury of twelve.

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; amended September 22, 1976, effective November 1, 1976[ . ]; amended April 16, 1999, effective July 1, 1999.

**Comment**

[ The 1976 amendment had the effect of making this Rule applicable to capital cases. Formerly a defendant in a capital case could not consent to be tried by fewer than twelve (12) jurors.

The procedure under this Rule is intended to apply only after a jury of twelve is initially sworn, and before a verdict is rendered. ]

The 1999 amendment conforms this rule to the 1998 amendment to article I, § 6 of the Pennsylvania Constitution providing that "the Commonwealth shall have the same right to trial by jury as does the accused."

**Committee Explanatory Reports:**

Final Report explaining the April 16, 1999 amendments concerning the 1998 Constitutional amendment published with the Court's Order at 29 Pa.B. 2290 (May 1, 1999).

**FINAL REPORT<sup>2</sup>****Amendments to Pa.Rs.Crim.P. 1101, 1102 and 1103;  
Commonwealth Right to Jury Trial**

On April 16, 1999, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court adopted changes to Pa.Rs.Crim.P. 1101 (Waiver of Jury Trial), 1102 (Procedure When Jury Trial is Waived), and 1103 (Agreement to be Tried by Fewer Than Twelve Jurors), effective July 1, 1999. These changes conform the rules to the November 3, 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides, "In criminal cases, the Commonwealth shall have the same right to trial by jury as does the accused."

**Introduction**

Before 1973, Rule 1101 provided that a defendant may waive a jury trial with the consent of the attorney for the Commonwealth. In 1973, the Court amended Rule 1101 by deleting the consent requirement. Since then, the Criminal Rules have not provided the Commonwealth with a say in the decision to proceed non-jury. In view of the 1998 Constitutional amendment, however, the Committee undertook a review of Rules 1101, 1102, and 1103, and agreed that some changes were necessary to accommodate this Constitutional change. The amended rules provide that: 1) a jury trial may be waived if both the defendant and Commonwealth agree; 2) after a jury trial waiver is approved by the court, the defendant, the attorney for the Commonwealth, or the judge may require a jury trial by withdrawal of the waiver or its approval;

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



and 3) the defendant may be tried by a jury of fewer than twelve if the defendant and the attorney for the Commonwealth agree.

#### *Discussion of Rule Changes*

##### *1. Rule 1101 (Waiver of Jury Trial)*

Rule 1101 provides the procedural requirements for waiving a jury trial. Without any changes clarifying the 1998 amendment to article I, § 6 of the Pennsylvania Constitution, the Committee was concerned that Rule 1101 would be construed as abrogating the newly granted substantive jury trial rights of the Commonwealth because the rule provides a procedure by which a defendant may waive a jury trial but does not include comparable procedures for the Commonwealth.

The Committee first considered adding language to the rule that would require that the defendant may waive a jury with the consent of the Commonwealth, comparable to the pre-1973 version of Rule 1101. After discussion, we rejected this language because it could be perceived as providing the Commonwealth with a "superior right to" rather than the "same right as" the defendant, and it did not adequately provide procedures for the Commonwealth to waive a jury.

The Committee next considered merely adding "and attorney for the Commonwealth" in the first line of the first sentence of Rule 1101 immediately after "the defendant." Thus Rule 1101 would provide that the defendant and the attorney for the Commonwealth both have to agree to waive a jury trial. The Committee agreed that this change accomplishes what was intended by the Constitutional amendment and recommended it to the Court. The amended rule retains the provision for the judge's approval because it is the judge's responsibility to supervise the trial to insure the fair and orderly administration of justice. The last two sentences are retained, as they are in the present rule, with the addition of "the attorney for the Commonwealth" after "the defendant" in the last sentence. Accordingly, the rule requires the signature of both the defendant and the attorney for the Commonwealth on the written waiver.

The Rule 1101 Comment contains several correlative revisions. The first paragraph and the last sentence of the second paragraph have been deleted because they are historical references that are no longer necessary in view of the constitutional amendment. The Comment retains the explanation of the 1973 amendment concerning ending the proscription against waiver of jury trials in capital cases in order to prevent confusion about whether the proscription would continue.

The Comment language, "that is, those in which the Commonwealth refuses to certify that it is not seeking the death penalty," in the first sentence of the second paragraph, has been deleted because the death penalty procedures have changed, and this is no longer a requirement.

Finally, three new paragraphs have been added to the Comment to:

- 1) explain why the rule is being amended;
- 2) make it clear that the judge should take all relevant considerations into account when deciding whether to approve a waiver, and that when the judge disapproves a waiver, the reasons for the disapproval should be stated on-the-record; and
- 3) avoid confusion concerning jury trial waiver when there are co-defendants and make it clear that when

there are co-defendants, waiver of a jury trial by one defendant does not waive a jury trial for any other defendant(s).

##### *2. Rule 1102 (Procedure when Jury Trial is Waived)*

Rule 1102 provides the procedures for a non-jury trial and for withdrawing a waiver. Because present Rule 1102 is defendant specific, the rule changes conform to the Rule 1101 changes by deleting the references to the defendant, and referring only to the waiver. See paragraphs (A) and (B).

The Rule 1102(B) amendments make it clear that the attorney for the Commonwealth, in addition to the defendant, may withdraw the waiver, or the judge may withdraw the approval of the waiver, before the commencement of trial. The Committee reasoned that a trial without a jury can only occur when the defendant and the attorney for the Commonwealth both sign the waiver form indicating their consent to waive, and if either party withdraws consent, then the waiver becomes invalid.

In addition, the last sentence of paragraph (B) has been deleted from the rule because the withdrawal of a jury trial waiver, or the approval of the waiver, after the trial commences, would terminate the non-jury trial, resulting in a mistrial, and raise double jeopardy issues. Since Rule 1118 (Mistrials) adequately covers the issue of mistrials, the Comment has been revised to include a cross-reference to Rule 1118 for those situations in which a party seeks to withdraw waiver after the commencement of trial.

Paragraph (C) of Rule 1102 has been deleted to make it clear that a defendant may waive a jury trial after a previous withdrawal of a jury trial waiver. The rule, therefore, is silent concerning subsequent withdrawals of jury trial waivers. Although this change creates a potential for "judge shopping" and for "waiving and withdrawing" in a repeated pattern of abuse if subsequent withdrawals are permitted, these occurrences are rare because the waiver is possible only when a defendant, attorney for the Commonwealth, and judge agree to the waiver. In addition, there are circumstances in which, after a waiver is withdrawn, a second waiver is warranted, such as when a waiver is withdrawn but the subsequent jury trial ends in a mistrial, or the defendant is convicted, but a new trial is ordered. In either event, the defendant may want to proceed without a jury for the new trial or retrial. Furthermore, prohibiting waiver after the withdrawal of a waiver frustrates judicial economy by requiring a possibly lengthy jury trial when the defendant, attorney for the Commonwealth, and the judge agree that the case should be tried non-jury. In addition, the Rule 1102 Comment includes a revision further clarifying that a jury trial may be waived under Rule 1101, with the judge's approval, even after the withdrawal of a previous jury trial waiver.

The Comment also has been revised by deleting the first paragraph, which is no longer necessary in view of the constitutional amendment. Two paragraphs have been added to the Comment to make it clear that 1) the changes are the result of the amendment to the constitution, and 2) when there are co-defendants, the withdrawal of a waiver of a jury trial by a defendant does not preclude waiver of a jury trial by any other defendant(s).

##### *3. Rule 1103 (Agreement to be Tried by Fewer than Twelve Jurors)*

Rule 1103 provides that a defendant may be tried by a jury of fewer than twelve. The rule has been reorganized to clarify the purpose of the rule. The language "the attorney for the Commonwealth" has been included to

conform to the constitutional provision giving the Commonwealth the "same right to a jury trial" as the defendant. Because of continued confusion about the timing requirements of this rule, Rule 1103 has been amended by moving into the body of the rule the Comment provision that the procedure under the rule is intended to apply after a jury is sworn and before verdict. Finally, the consent of defense counsel requirement has been deleted from the rule because the decision to agree to a jury of fewer than twelve belongs to the defendant and the attorney for the Commonwealth.

Two revisions have been made to the Rule 1103 Comment. The first paragraph has been deleted because it is an historical reference that is no longer necessary in view of the amendment to the constitution, and a new paragraph has been added to make it clear that the rule was changed as a result of the 1998 constitutional amendment.

[Pa.B. Doc. No. 99-697. Filed for public inspection April 30, 1999, 9:00 a.m.]

## COMMONWEALTH COURT

Regular Sessions of Commonwealth Court for the Year 2000; No. 126 M.D. No. 3

### Order

And Now, this 12th day of April, 1999 pursuant to Pa.R.A.P. 3703, the following calendar is fixed for the year 2000:

<i>Session</i>	<i>Situs</i>
February 7-11	Pittsburgh
March 6-10	Philadelphia
April 10-14	Harrisburg
May 15-19	Philadelphia
June 5-9	Pittsburgh
September 11-15	Harrisburg
October 2-6	Philadelphia
October 30—November 3	Pittsburgh
December 4-8	Harrisburg

JAMES GARDNER COLINS,  
*President Judge*

[Pa.B. Doc. No. 99-698. Filed for public inspection April 30, 1999, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that Paul Joseph Konzelmann, II, having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order dated April 12, 1999 disbaring Paul Joseph Konzelmann, II from the practice of law in this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides

outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 99-699. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Notice of Transfer of Attorney to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 18, 1999, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 17, 1999 for Compliance Group 2 due August 31, 1999.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Arlindo B. Araujo  
Newark, NJ

Danya L. Armenti  
Moorestown, NJ

Michael S. Berger  
Haddonfield, NJ

Amy Klein Blaker  
Cherry Hill, NJ

James Downing Brady  
Merchantville, NJ

Vladimir A. Breslav  
Brookline, MA

John Edward Bruder  
Point Pleasant, NJ

Robert William Bucknam, Jr.  
Haddonfield, NJ

Gilbert F. Casellas  
Washington, DC

Christopher N. Ciko  
Redondo Beach, CA

Lisa Carol Cohen  
Cherry Hill, NJ

Anita Colleen Cooke  
Washington, DC

Michael Jay Cornelison  
Falls Church, VA

Carl J. Dallarda  
Princeton, NJ

Joseph A. Del Duca  
Haddonfield, NJ

Beverly Dennis III  
Washington, DC

Stuart Donegan  
Cherry Hill, NJ

Jill A. Douthett  
Corrales, NM

Alexandra C. Epsilanty  
Syracuse, NY

Thomas P. Frascella  
Lawrenceville, NJ

Michael Frey  
Liberty, NY

Saul Gary Gruber  
Cherry Hill, NJ

Carol B. Guerrero  
San Francisco, CA

Paul D. Hardy  
Tampa, FL

George C. Hopkins  
Washington, DC

Nancie Susan Jennifer  
Eureka, CA

Eileen G. Jones  
Baton Rouge, LA

Mark S. Keegan  
Greer, SC

David J. Knapp  
Somerville, NJ

Gordon Douglas Lavalette  
Chester, NJ

Salvatore A. Mangione  
Rochester, NY

Kathleen M. Marshall  
Chevy Chase, MD

James Henry Maynard  
Morristown, NJ

Patrick H. McCarthy  
Washington, DC

Mark J. Molz  
Hainesport, NJ

Austin J. Murphy, Jr.  
Washington, DC

Kevin Patrick Oates  
New York, NY

Aileen O'Driscoll  
Newark, NJ

Laura Michelle Plastine  
Secaucus, NJ

John William Ray  
Miller Place, NY

Stephen A. Rudolph  
Sea Girt, NJ

Victor M. Saul  
Atlantic City, NJ

Courtney A. Schael  
Roseland, NJ

Elizabeth M. Schwabedissen  
Miami, FL

David E. Silverstein  
Woodbridge, NJ

Steven Seth Tauber  
Washington, DC

Geza Toth  
Hungary

Timothy J. Weiler  
Wilmington, DE

Martin S. Weisberg  
Voorhees, NJ

Anthony Wilson  
Landover, MD

Mary Lou Zuschnitt  
Marlton, NJ

ELAINE M. BIXLER,  
*Executive Director and Secretary*

[Pa.B. Doc. No. 99-700. Filed for public inspection April 30, 1999, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF CHIROPRACTIC [49 PA. CODE CH. 5]

#### Radiologic Procedures Examination Fees

The State Board of Chiropractic (Board) amends § 5.6 (relating to fees) to read as set forth in Annex A.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a), and section 522(a) of the Chiropractic Practice Act (act) (63 P. S. § 625.522(a)), required examinations must be prepared and administered by a professional testing organization under contract to the Board. The Board contracts with the American Chiropractic Registry of Radiologic Technologists (ACRRT) to provide the Board approved radiologic procedures examination for auxiliary personnel. The new fee reflects a reduction in the fee charged to examinees.

Public notice of intention to amend the regulation under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL) has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. Persons affected by the amendment, however, have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

#### *Compliance with Executive Order 1996-1*

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final/proposed omitted regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

#### *Statutory Authority*

This rulemaking is adopted under section 812.1 of The Administrative Code of 1929 and section 1101(a) of the act (63 P. S. § 625.1101(a)).

#### *Fiscal Impact and Paperwork Requirements*

This rulemaking will have no fiscal impact on the Commonwealth or its political subdivisions. Persons wishing to perform radiologic procedures under the supervision of a chiropractor are required to take and pass either a National certification examination or an examination approved by the State Boards of Medicine or Osteopathic Medicine, or the Board under § 5.62 (relating to auxiliary personnel who may perform radiological procedures). Persons who elect to take the Board approved examination will be required to pay the fee to cover contract costs for the examination.

#### *Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on March 12, 1999, a copy of the

final-omitted regulation was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairperson of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the final-omitted regulation was submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, the final-omitted regulation was deemed approved by the Senate Committee on April 1, 1999, and was approved by the House Committee on March 23, 1999. Under section 5.1(e) of the Regulatory Review Act, IRRC met and approved the final-omitted regulation on April 8, 1999.

#### *Additional Information*

Individuals who desire information are invited to submit inquiries to Deb Smith, Board Administrator, State Board of Chiropractic, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7155.

#### *Findings*

The Board finds that:

(1) Public notice of intention to amend the regulation as adopted by this order under sections 201 and 202 of the CDL, has been omitted under section 204(3) of the CDL, because the Board has, for good cause, found that the procedure specified in sections 201 and 202 of the CDL is in this circumstance, unnecessary, because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination.

(2) Persons affected by the regulation as amended by this order have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 5, are amended by amending § 5.6 to read as set forth in Annex A.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

DONALD J. MAHER, D.C.,  
Chairperson

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 2195 (April 24, 1999).)

**Fiscal Note:** 16A-4310. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 5. STATE BOARD OF CHIROPRACTIC**

**§ 5.6. Fees.**

The Board will charge the following fees:

Pennsylvania Chiropractic Law Examination . . . .	\$87
Application for licensure by examination . . . . .	\$25
Application for licensure by reciprocity . . . . .	\$65
Biennial registration . . . . .	\$210
Limited license . . . . .	\$30
Adjunctive procedure certification . . . . .	\$25
Certification of grades or licensure . . . . .	\$25
Application for continuing education course approval . . . . .	\$30
Radiological procedures examination . . . . .	\$58
License restoration . . . . .	\$25

\* \* \* \* \*

[Pa.B. Doc. No. 99-701. Filed for public inspection April 30, 1999, 9:00 a.m.]

**STATE BOARD OF LANDSCAPE ARCHITECTS**

**[49 PA. CODE CH. 15]**

**Examination Fees**

The State Board of Landscape Architects (Board) amends § 15.12 (relating to fees) pertaining to examination fees for licensure of landscape architects, to read as set forth in Annex A.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) examinations for licensure must be prepared and administered by a professional testing organization under contract to the appropriate board. The Board contracts with the Council of Landscape Architectural Registration Boards (C.L.A.R.B.) to provide the Landscape Architect Registration Examination (L.A.R.E.) to Pennsylvania applicants. Costs for examination services will increase slightly beginning with the December 1999 examinations. This rulemaking will update fees for examinations to applicants for licensure as landscape architects in accordance with the new costs.

The rulemaking will also incorporate revised section designations which will be utilized beginning with the June 1999 L.A.R.E. administration. Alphabetical, rather than numerical, designations will identify the various sections of the L.A.R.E. A new Section C will replace old Sections 3 and 4 which were administered for the last time in December 1998. Applicants who have passed either Section 3 or Section 4, but not both, will be required to complete new Section C. Those who have passed both Sections 3 and 4 will be given credit for new Section C.

The following chart summarizes the section designation changes.

<i>Current (1998) L.A.R.E. Equivalent</i>	<i>New (1999) L.A.R.E. Title</i>
Section 1—Legal and Administrative Aspects of Practice	Section A—Legal and Administrative Aspects of Practice
Section 2—Analytical and Technical Aspects of Practice	Section B—Analytical Aspects of Practice
Section 3—Conceptualization and Communication; and	Section C—Planning and Site Design
Section 4—Design Synthesis	
Section 5—Integration of Technical and Design Requirements	Section D—Structural Considerations and Materials and Methods of Construction
Section 6—Grading and Drainage	Section E—Grading, Drainage and Storm Water Management

Public notice of intention to amend the regulation under procedures in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL), has been omitted under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. Persons affected by this regulation, however, have been given actual notice of the Board's intention to adopt this regulation in advance of final rulemaking under section 204(2) of the CDL.

*Compliance with Executive Order 1996-1*

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1 (relating to regulatory review and promulgation). This rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

*Statutory Authority*

This rulemaking is proposed under section 812.1 of The Administrative Code of 1929 and sections 4(2) and (9) and 5(a) of the Landscape Architects' Registration Law (63 P. S. §§ 904(2) and (9) and 905(a)).

*Fiscal Impact and Paperwork Requirements*

This rulemaking will have no fiscal impact on the Commonwealth or its political subdivisions. Applicants for the licensure examinations will be required to pay slightly increased fees to cover contract costs for the examinations.

This rulemaking will not create new paperwork requirements for the Commonwealth, its political subdivisions or the private sector.

*Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on March 10, 1999, a copy of this rulemaking was submitted to the Independent Regulatory Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Profes-

sional Licensure and the House Committee on Professional Licensure. At the same time, a copy of this rulemaking was submitted to the Office of Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, this rulemaking was approved by the House Committee on March 23, 1999, and deemed approved by the Senate Committee on March 30, 1999. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 8, 1999 and approved the rulemaking.

*Additional Information*

Individuals who desire information may submit inquiries to Shirley S. Klinger, Board Administrator, State Board of Landscape Architects, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 772-8528.

*Findings*

The Board finds that:

(1) Public notice of intention to amend the regulation as adopted by this order under sections 201 and 202 of the CDL has been omitted under section 204(3) of the CDL because the Board has, for good cause, found that the procedures in sections 201 and 202 of the CDL are, in this circumstance, unnecessary, inasmuch as section 812.1 of The Administrative Code of 1929 requires that applicant fees cover the cost of the examination.

(2) Persons affected by the regulation as adopted by this order have been given actual notice of the Board's intention to amend the regulations in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

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

(a) The regulations of the Board, 49 Pa. Code Chapter 15, are amended by amending § 15.12 to read as set forth in Annex A.

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

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

(d) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

DAVID M. DUTOT, L.A.,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 2195 (April 24, 1999).)*

**Fiscal Note:** 16A-614. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 15. STATE BOARD OF LANDSCAPE ARCHITECTS**

**APPLICATION PROCEDURES**

**§ 15.12. Fees.**

Following is the schedule of fees charged by the Board:

(1) Application for examination.....	\$40
(2) Certification of licensure or scores.....	\$15
(3) Fee per section of licensing examination:	
(i) June 1999:	
Section A.....	\$40
Section B.....	\$75
Section C.....	\$150
Section D.....	\$125
Section E.....	\$150
(ii) December 1999:	
Section A.....	not administered
Section B.....	not administered
Section C.....	\$160
Section D.....	\$130
Section E.....	\$160
(iii) June 2000:	
Section A.....	\$40
Section B.....	\$80
Section C.....	\$160
Section D.....	\$130
Section E.....	\$160
(4) Administration of examination for one section or more.....	\$45
(5) Application for licensure without examination:	
(i) With proof of licensure.....	\$45
(ii) Without proof of licensure.....	\$255
(6) Duplicate certificate fee.....	\$5
(7) Biennial registration fee.....	\$125

[Pa.B. Doc. No. 99-702. Filed for public inspection April 30, 1999, 9:00 a.m.]

**STATE BOARD OF PSYCHOLOGY**

**[49 PA. CODE CH. 41]**

**Examination Fees**

The State Board of Psychology (Board) amends § 41.12 (relating to fees) pertaining to increased fees for the National portion of the April 1999 and subsequent examinations for licensure to read as set forth in Annex A.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a), examinations for licensure must be

prepared and administered by a professional testing organization under contract to the appropriate board. Both the National portion (Pennsylvania Practice of Psychology Examination) and the State portion (Pennsylvania Psychology Law Examinations) are administered by Professional Examination Service.

This rulemaking will change fees for the National portion of the examination to candidates for licensure. Contract costs for the National portion of the examination will increase from \$295 to \$350 per candidate beginning April 1999. To identify the source of the increase, the contract costs for each portion of the examination are segregated from the administrative costs. Therefore, while the Annex A alters the fees for the National and State portions of the examination as well as the administrative costs, only the fees for the National portion will be increased.

Public notice of intention to amend the regulation under the procedures specified in sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL), has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. All persons affected by the rulemaking, however, have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

*Statutory Authority*

This rulemaking is adopted under the authority of section 812.1 of The Administrative Code of 1929 and sections 3.2(2) and 3.3(d) of the Professional Psychologists Practice Act (act) (63 P. S. §§ 1203.2(2) and 1203.3(d)).

*Fiscal Impact and Paperwork Requirements*

The rulemaking will have no fiscal impact on the Commonwealth or its political subdivisions. Candidates for licensure by examination will be required to pay an increased fee to cover contract costs for the National portion of the examination.

*Regulatory Review*

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on March 12, 1999, a copy of the final-omitted regulation was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the final-omitted regulation was submitted to the Office Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, the final-omitted regulation was deemed approved by the Senate Consumer Protection and Professional Licensure Committee on April 1, 1999, and was approved by the House Professional Licensure Committee on March 23, 1999. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 8, 1999, and approved the final-omitted regulation.

*Additional Information*

Individuals who desire information are invited to submit inquiries to Melissa Wilson, Board Administrator, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7155.

*Findings*

The Board finds that:

(1) Public notice of intention to amend the regulation as adopted by this order under the procedures specified in sections 201 and 202 of the CDL has been omitted under the authority contained in section 204(3) of the CDL, because the Board has, for good cause, found that the procedure specified in sections 201 and 202 of the CDL, is in this circumstance, unnecessary, because section 812.1 of The Administrative Code of 1929 requires candidate fees cover the cost of the examination.

(2) Persons affected by the amendment as adopted by this order have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending § 41.12 to read as set forth in Annex A.

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

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

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

YVONNE E. KEAIRNS, Ph.D.,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to the document, see 29 Pa.B. 2195 (April 24, 1999).)*

**Fiscal Note:** 16A-635. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 41. STATE BOARD OF PSYCHOLOGY LICENSES**

**§ 41.12. Fees.**

The schedule of fees charged by the Board is as follows:

Initial application fee .....	\$105
Reapplication fee—first time examination failure. . . . .	\$15
Reapplication fee—subsequent examination failure .....	\$105
Examination fee—National part only .....	\$350
Examination fee—State part only .....	\$42
Administration fee (to be added to sum of parts taken at one sitting) .....	\$45

Certification fee.....	\$15
Biennial renewal fee.....	\$120
Application fee—continuing education sponsor/ provider approval.....	\$165

[Pa.B. Doc. No. 99-703. Filed for public inspection April 30, 1999, 9:00 a.m.]

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

#### Importation and Transportation of Horseshoe Crabs

The Fish and Boat Commission (Commission) by this order amends Chapter 63 (relating to general fishing regulations). The Commission is publishing this rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The rulemaking relates to the importation and transportation of horseshoe crabs.

##### A. Effective Date

The rulemaking will go into effect upon publication of an order adopting the regulation in the *Pennsylvania Bulletin*.

##### B. Contact Person

For further information on the rulemaking, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

##### C. Statutory Authority

The rulemaking is published under the statutory authority of section 2102(c) of the code (relating to rules and regulations).

##### D. Purpose and Background

The rulemaking is designed to update, modify and improve Commission regulations relating to the importation and transportation of fish. The specific purpose is described in more detail under the summary of changes.

##### E. Summary of Changes

Late in 1998, the Commission's Law Enforcement and Fisheries staff became aware of issues related to landing in Commonwealth ports of horseshoe crabs taken from ocean waters. These animals are protected in New Jersey and Delaware, and the Atlantic States Marine Fisheries Commission is working on efforts to provide coastal wide protections.

The immediate issue late last year was resolved when Delaware was able to take action to prevent the transportation of these fish through Delaware waters. However,

there was still a need for the Commission to take some action (similar to that the Commission took with respect to weakfish) to close any possible loopholes permitting landing of these fish in the Commonwealth. The Commission adopted the rulemaking as proposed.

##### F. Paperwork

The rulemaking will not increase paperwork and will create no new paperwork requirements.

##### G. Fiscal Impact

The rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The rulemaking will impose no new costs on the private sector or the general public, except on those individuals who will now have to land horseshoe crabs in ports located in states other than this Commonwealth.

##### H. Public Involvement

A notice of proposed rulemaking was published at 29 Pa.B. 1397 (March 13, 1999). The Commission did not receive any public comments regarding this proposal.

##### Findings

The Commission finds that:

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

(2) A public comment period was provided and no comments were received.

(3) The adoption of the regulation of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

##### Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 63, are amended by adding § 63.31 to read as set forth at 29 Pa.B. 1397.

(b) The Executive Director will submit this order and 29 Pa.B. 1397 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 29 Pa.B. 1397 and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-94 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 99-704. Filed for public inspection April 30, 1999, 9:00 a.m.]



# PROPOSED RULEMAKING

## STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

### Fees

The State Board of Nursing (Board) proposes to amend §§ 21.5, 21.147 and 21.253 (relating to fees) by revising certain application fees to read as set forth in Annex A.

#### A. Effective Date

The proposed amendments would be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

#### B. Statutory Authority

The proposed amendments are authorized under section 11.2(a) and (d) of the Professional Nursing Law (63 P. S. § 221.2(a) and (d)) and under section 17.5(a) of the Practical Nurse Law (63 P. S. § 667.5(a)).

#### C. Background and Purpose

Section 11.2(a) and (d) of the Professional Nursing Law and section 17.5(a) of the Practical Nursing Law require the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses of the Board are funded through biennial license renewal fees. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from general operating revenues and are funded through fees in which the cost of providing the service forms the basis for the fee.

In a recent systems audit of the operations of the Board within the Bureau of Professional and Occupational Affairs, the fees for services for licensees and applicants were analyzed to determine if the fees reflected the actual cost of providing the services. Actual cost calculations are based upon the following formula:

$$\begin{array}{r} \text{number of minutes to perform the function} \\ \times \\ \text{pay rate for the classification of the} \\ \text{personnel performing the function} \\ + \\ \text{a proportionate share of administrative overhead} \end{array}$$

As a result of the audit, the Board proposes to increase seven existing fees and to add four new fees for services which had previously not resulted in a charge to the applicant. The analysis determined that current fees do not accurately reflect the actual cost of providing the following services: license applications by endorsement, license applications for out-of-State graduates; reactivation after 5 years of inactivity; temporary practice permits; certified registered nurse practitioner (CRNP) certification; applications for new nursing program approval; and review and challenge of registered nurse (RN) and practical nurse (PN) examination.

Board fees for license applications by endorsement, CRNP certification and certification of scores have not been revised since 1987. Fees for out-of-State graduate license applications, temporary practice permits, new nursing program approval applications, and challenge of the RN and PN examinations have not been revised since

1991, and the fee for reactivating a license after 5 years of inactivity was last revised in 1993. The fee charged for review and challenge of the RN examination exceeds actual costs, but all other fees fell short of the cost to provide the service. The fees for license restoration after a sanction, applications for extending a temporary practice permit, certification of scores and certification of license history are proposed to reflect the actual cost of providing these services.

In this proposal, fees for the services identified would be adjusted to allocate costs to those who use the service or application. The Board would continue to apportion its enforcement and operating costs to the general licensing population when the Board makes its biennial reconciliation of revenues and expenditures.

#### D. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendments the Board considered the least restrictive alternative to regulate costs for services requested by licensees and applicants.

#### E. Fiscal Impact and Paperwork Requirements

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Board. The proposed amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

#### F. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

#### G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 19, 1999, the Board submitted a copy of this proposed rulemaking, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee (Committees). In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Board, the General Assembly and the Governor, of objections raised.

#### H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Robert G. Cameron, Counsel, State Board of Nursing, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this

proposed rulemaking. Please reference No. 16A-5112 (Fees), when submitting comments.

M. CHRISTINE ALICHNIE, Ph.D., RN,  
Chairperson

**Fiscal Note:** 16A-5112. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 21. STATE BOARD OF NURSING**

**Subchapter A. REGISTERED NURSES**

**GENERAL PROVISIONS**

**§ 21.5. Fees.**

(a) The following fees are charged by the Board:

\* \* \* \* \*

Licensure by endorsement . . . . .	\$[ 25 ] 100
Temporary permit . . . . .	\$[ 20 ] 35
<b>Extension of temporary permit . . . . .</b>	<b>\$60</b>
Application for approval of new nursing program . . . . .	\$[ 300 ] 475
Fee for review and challenge of RN exams . . . . .	\$[ 220 ] 170
Application fee for out-of-State graduates . . . . .	\$[ 30 ] 100
* * * * *	
Reactivation of license (after 5 years or longer) . . . . .	\$[ 20 ] 50
<b>Restoration after suspension or revocation . . . . .</b>	<b>\$50</b>
<b>Certification of scores . . . . .</b>	<b>\$25</b>
<b>Certification of license history . . . . .</b>	<b>\$40</b>
* * * * *	

**Subchapter B. PRACTICAL NURSES  
GENERAL PROVISIONS**

**§ 21.147. Fees.**

(a) The following fees are charged by the Board:

\* \* \* \* \*

Licensure by endorsement . . . . .	\$[ 25 ] 100
Temporary permit . . . . .	\$[ 20 ] 35
<b>Extension of temporary permit . . . . .</b>	<b>\$60</b>
Application for approval of new nursing program . . . . .	\$[ 300 ] 475
Fee for review and challenge of PN exams . . . . .	\$[ 130 ] 170
Application fee for out-of-State graduates . . . . .	\$[ 30 ] 100
* * * * *	
Reactivation of license (after 5 years or longer) . . . . .	\$[ 20 ] 50
<b>Restoration after suspension or revocation . . . . .</b>	<b>\$50</b>
<b>Certification of scores . . . . .</b>	<b>\$25</b>

**Certification of license history . . . . . \$40**  
\* \* \* \* \*

**Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS  
GENERAL PROVISIONS**

**§ 21.253. Fees.**

The following fees are charged by the Board:

Certification . . . . . \$[ 45 ] 100  
\* \* \* \* \*

[Pa.B. Doc. No. 99-705. Filed for public inspection April 30, 1999, 9:00 a.m.]

**STATE BOARD OF OPTOMETRY**

**[49 PA. CODE CH. 23]  
Application Fees**

The State Board of Optometry (Board) proposes to amend § 23.91 (relating to fees) by revising certain application fees to read as set forth in Annex A.

*A. Effective Date*

The proposed amendment will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

*B. Statutory Authority*

The proposed amendment is authorized under sections 3(b)(14), 5(b) and 9 of the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.3(b)(14), 244.5(b) and 244.9).

*C. Background and Purpose*

The act requires the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses of the Board are funded through biennial license renewal fees. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from general operating revenues and are funded through fees in which the cost of providing the service forms the basis for the fee.

In a recent systems audit of the operations of the Board within the Bureau of Professional and Occupational Affairs, the fees for services to licensees and applicants were analyzed to determine if the fees reflected the actual cost of providing the services. Actual cost calculations are based upon the following formula:

$$\begin{aligned} &\text{number of minutes to perform the function} \\ &\quad \times \\ &\text{pay rate for the classification of} \\ &\text{personnel performing the function} \\ &\quad + \end{aligned}$$

a proportionate share of administrative overhead.

The analysis determined that the fees for applications for certified copies of licenses for additional practice locations, verifications of licenses, and certifications of licenses or examination scores did not accurately reflect

the actual cost of providing the services. Fees for the Board in these categories have not been revised since 1988, and current fees fell short of the cost to provide the service. With respect to continuing education program approval, the analysis determined that, although the Board has been expending funds to approve programs not otherwise offered by providers identified in the Board's regulations as meeting the Board's requirements, no fee had been charged. Rather, the costs had been absorbed by biennial renewal fees paid by all licensees.

In this proposal, fees for the various services identified would be adjusted to allocate costs to those who use the service or application. The Board would continue to apportion the enforcement and operating costs to the general licensing population when the Board makes its biennial reconciliation of revenue and expenditures.

*D. Compliance with Executive Order 1996-1*

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the proposed amendment the Board considered the least restrictive alternative to regulate costs for services requested by licensees and applicants.

*E. Fiscal Impact and Paperwork Requirements*

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Board. The amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

*F. Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

*G. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 19, 1999, the Board submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed amendment, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Board within 10 days after the expiration of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendment, by the Board, the General Assembly and the Governor, of objections raised.

*H. Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to Deborah L. Smith, Board Administrator, State Board of Optometry, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No. 16A-527 (Application Fees), when submitting comments.

JAY B. TANNER, O.D.,  
*Chairperson*

**Fiscal Note:** 16A-527. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 23. STATE BOARD OF OPTOMETRY FEES**

**§ 23.91. Fees.**

The following is the schedule of fees for services charged by the Board:

	* * * * *
Certified copy of license for each additional practice location .....	\$ [ 15 ] 20
Certification of scores or licensure, or both .	\$ [ 15 ] 25
Verification of licensure .....	\$ [ 10 ] 15
	* * * * *
<b>Application for continuing education program approval .....</b>	<b>\$45</b>

[Pa.B. Doc. No. 99-706. Filed for public inspection April 30, 1999, 9:00 a.m.]

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the Department of Banking

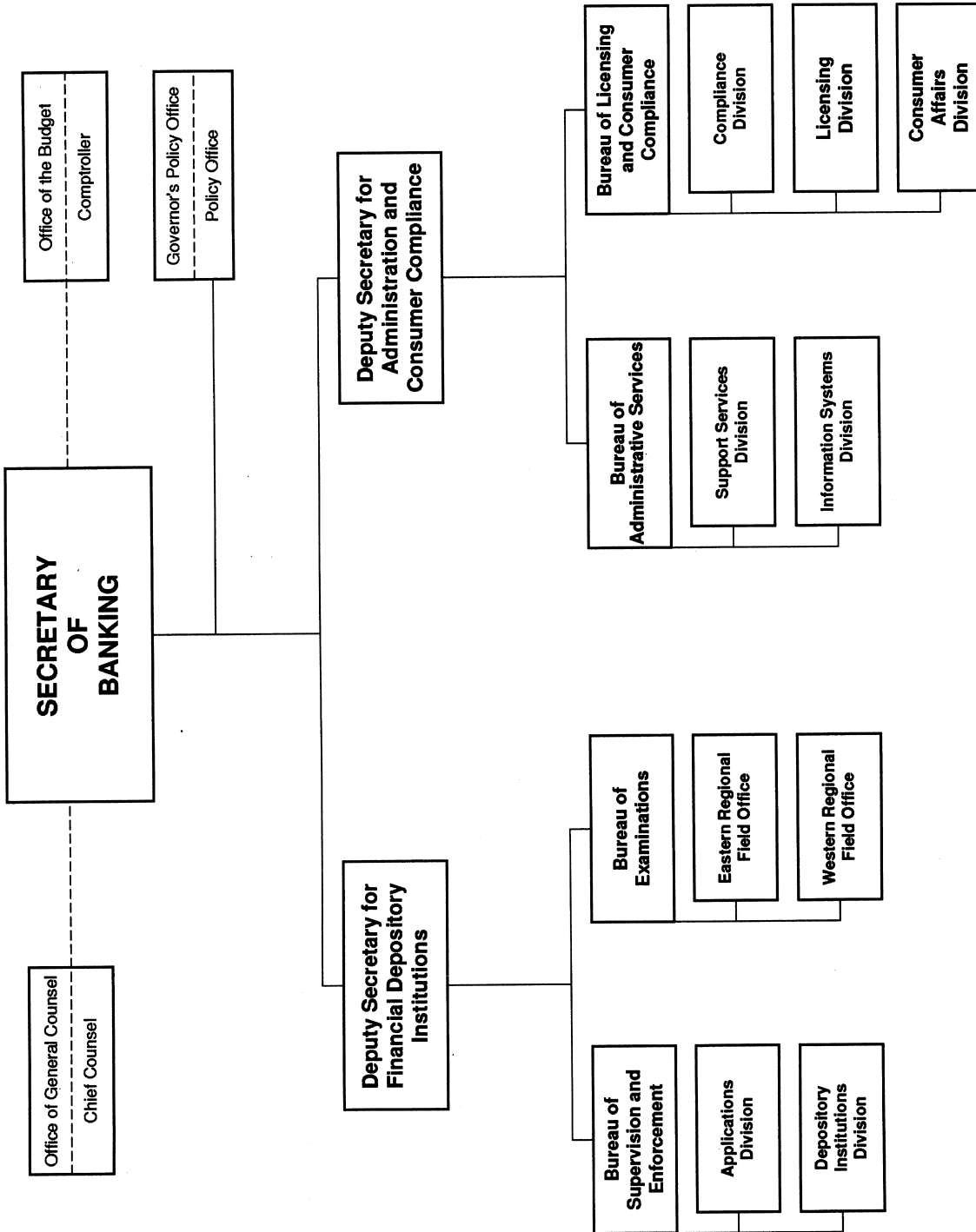
The Executive Board approved a reorganization of the Department of Banking effective April 16, 1999.

The organization chart at 29 Pa.B. 2303 (May 1, 1999) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 99-707. Filed for public inspection April 30, 1999, 9:00 a.m.]

**DEPARTMENT OF BANKING**



# NOTICES

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking of the Commonwealth of Pennsylvania, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending April 20, 1999.

#### BANKING INSTITUTIONS

##### Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
4-29-99	Penn Laurel Financial Corp., Curwensville, to acquire 100% of the voting shares of Clearfield Bank & Trust Company, Clearfield	Curwensville	Filed

##### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-19-99	Patriot Bank Pottstown Montgomery County	4915 Perkiomen Ave. Exeter Township Berks County	Approved
4-20-99	Harris Savings Bank Harrisburg Dauphin County	1147 Eichelberger St. Hanover York County	Approved

##### Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-14-99	Royal Bank of Pennsylvania Narberth Montgomery County	<i>To:</i> 655 W. Dekalb Pike King of Prussia Upper Merion Twp. Montgomery County  <i>From:</i> 1030 Dekalb Pike King of Prussia Upper Merion Twp. Montgomery County	Approved

##### Articles of Amendment

<i>Date</i>	<i>Name of Bank</i>	<i>Purpose</i>	<i>Action</i>
4-15-99	The Glenmede Trust Company Philadelphia Philadelphia County	To provide for a change to Article Nine for the purpose of restating the permissible investments of the Company's capital so as to include the investment in foreign securities.	Approved and Effective

#### SAVINGS ASSOCIATIONS

No activity.

#### CREDIT UNIONS

No activity.

RICHARD C. RISHTEL,  
*Secretary*

[Pa.B. Doc. No. 99-708. Filed for public inspection April 30, 1999. 9:00 a.m.]

## DEPARTMENT OF EDUCATION

### Application of Harrisburg Area Community College for Approval to Establish a Branch Campus

#### Notice of Opportunity to Respond to this Application

Under 22 Pa. Code § 34.11 (relating to establishment of additional branches or campuses or alteration of degree level), the Department of Education (Department) will consider the application of Harrisburg Area Community College (HACC), a State-supported institution, for approval by the Secretary of Education, to establish a Gettysburg Area Campus at 705 Old Harrisburg Road, Gettysburg. The college's Gettysburg Center, an off-campus operation, currently operates at the same site, which is located in the North Gettysburg Shopping Plaza, Cumberland Township, Adams County, PA.

The application was received by the Secretary of Education on March 23, 1999, and is available for public inspection in the business office of the HACC Gettysburg Center, 705 Old Harrisburg Road, Suite 2, Gettysburg, PA 17325-3401, or in the Public Relations Office at HACC's Wildwood (Main) Campus, 110 Blocker Hall, One HACC Drive, Harrisburg, PA 17110-2999.

Written public comments on this application may be submitted to the Department within 30 days of the date of publication of this notice. Comments should be brief and should be limited to: (a) whether and how the application adversely affects the respondent or others; (b) whether and how the application assists the respondent or others; and (c) whether the application is feasible and needed or not feasible and not needed in the region.

All written comments shall be filed with Dr. Michael B. Poliakoff, Deputy Secretary for Postsecondary and Higher Education, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333 [(Phone: (717) 787-5041; fax (717) 783-0583; TTY (717) 783-8445)] on or before 4 p.m. on the due date prescribed by this notice.

EUGENE W. HICKOK,  
*Secretary*

[Pa.B. Doc. No. 99-709. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Availability of 1999—2000 Tech Prep Competitive Funds under the Carl D. Perkins Vocational and Technical Education Act of 1998

Applications for FY 1999—2000 Perkins Vocational and Technical Education competitive funds are invited for the following funding category: 386—Tech Prep.

#### 1. *Eligibility Requirements*

SDs, AVTSS, IUs and accredited postsecondary institutions offering less than baccalaureate degree, occupational programs with consortium membership consisting of at least one eligible secondary, and one eligible postsecondary institution.

#### 2. *Application Deadlines*

Applications are due June 7, 1999 by 4 p.m.

#### 3. *Application Forms and Guidelines*

Completion of applications requires the examination of two references: general and categorical funding guidelines. These documents are available on the home page of the Department of Education at [www.pde.psu.edu](http://www.pde.psu.edu) under Vocational Education as General Funding Guidelines and Tech Prep Guidelines. Printed copies may be requested from the Division of Advisory and Approval Services, Bureau of Vocational-Technical Education, 333 Market Street, 6th Floor, Harrisburg, PA 17126-0333, (717) 787-8022.

#### 4. *Completed Applications*

Completed applications should be mailed or delivered (not faxed) to the Division of Advisory and Approval Services.

#### 5. *Questions Concerning the Guidelines*

Questions concerning the guidelines can be submitted in writing to Raymond Watson at the Bureau of Vocational-Technical Education up to May 11, 1999. A response to questions will be made through the Department of Education's PENN\*LINK Bulletin Board on May 19, 1999. Persons wishing a printed copy of the responses must do so in writing to Raymond Watson.

EUGENE W. HICKOK,  
*Secretary*

[Pa.B. Doc. No. 99-710. Filed for public inspection April 30, 1999, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

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#### APPLICATIONS

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### APPLICATIONS RECEIVED UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

[National Pollution Discharge Elimination System Program (NPDES)]

DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

(Part I Permits)

The following parties have applied for an NPDES permit to discharge controlled wastewaters into the surface waters of this Commonwealth. Unless otherwise indicated on the basis of preliminary review and application of lawful standards

and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain effluent limitations and special conditions. These proposed determinations are tentative.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permit are invited to submit a statement to the Field Office indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Field Office of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, proposed effluent limitations and special conditions, comments received and other information are on file and may be inspected and arrangements made for copying at the Field Office indicated above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact the Secretary to the Board at (717) 787-3483. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

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### Applications for National Pollutant Discharge Elimination System (NPDES) permit to discharge to State waters.

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*Southeast Regional Office: Regional Manager, Water Management, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-6130.*

**PA 0011657.** Industrial waste, **PECO Energy Company**, 2600 Monroe Boulevard, Norristown, PA 19403.

This application is for renewal of an NPDES permit to discharge cooling water from Schuylkill Generating Station; Trigen equipment and Grays Ferry Cogeneration facility located in City of Philadelphia, **Philadelphia County**. This is an existing discharge to Schuylkill River Delaware River Estuary Zone 4.

The receiving stream is classified for the following uses: warm water fishery (maintenance only).

The proposed effluent limits for cooling water for Outfall 001 based on an average flow of 360.4 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Suspended Solids	30	60	75
Oil and Grease	15		30
Temperature			110°F
Heat Rejection Rate		1,558 million BTU per hour	
Total Residual Oxidant			0.2
pH	within limits of 6.0—9.0 standard units at all times		

The proposed effluent limits for internal monitoring point 101 at the effluent of the neutralizing tank based on an average flow of 0.18 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Suspended Solids	30	100	
Oil and Grease	15	20	30
Total Copper	1.0	1.0	
Total Iron	1.0	1.0	
pH	within limits of 6.0—9.0 standard units at all times		

The proposed effluent limits for internal monitoring point 201 at the effluent of the oil water separator based on an average flow of 20,000 gallons per day are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Suspended Solids	30	100	
Oil and Grease	15	20	30
pH	within limits of 6.0—9.0 standard units at all times		

The proposed effluent limits for internal monitoring point 301 prior to blending with Outfall 001 based on an average flow of 70.11 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Suspended Solids	30	100	
Oil and Grease	15	20	30
Total Residual Chlorine			0.2



*Other Conditions:*

The EPA waiver is not in effect.  
 No discharge of PCB compounds.  
 Thermal Requirements.

**PA 0012696.** Industrial waste, **McNeil Consumer Products Company**, 7050 Camp Hill Road, Fort Washington, PA 19034.

This application is for renewal of an NPDES permit to discharge treated process wastewater from McNeil consumer wastewater treatment plant in Whitemarsh Township, **Montgomery County**. This is an existing discharge to Sandy Run.

The receiving stream is classified for trout stocking fishery.

The proposed effluent limits for Monitoring Point MP101 based on an average flow of 58,000 gallons per day are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	10	20	25
(11-1 to 4-30)	20	40	50
Suspended Solids	30	60	75
Ammonia (as N)			
(5-1 to 10-31)	2	4	5
(11-1 to 4-30)	6	12	15
COD	220	440	550
Temperature			110°F
Phosphorus (as P)	monitor	monitor	
Total Residual Chlorine	0.5		1.25
Fecal Coliform	200 colonies/100 ml as a geometric average		
Dissolved Oxygen	minimum of 5 mg/l at all times		
pH	within limits of 6.0—9.0 standard units at all times		
Total Copper	0.17	0.34	0.425
Free Cyanide	0.03	0.06	0.075
Chlorodibromomethane	0.02	0.04	0.05
Dichlorobromomethane	0.05	0.10	0.125

The proposed effluent limits for stormwater monitoring point MP201 are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			monitor
COD			monitor
Oil and Grease			monitor
pH			monitor
TSS			monitor
TKN			monitor
Total Phosphorus			monitor
Dissolved Iron			monitor

*Other Conditions:*

The EPA waiver is in effect.

**PA 0026964.** Sewage, **Montgomery County Sewer Authority**, Court House, P. O. Box 311, Norristown, PA 19404-0311.

This application is for renewal of an NPDES permit to discharge treated sewage from the Oaks Wastewater Treatment Plant in Upper Providence Township, **Montgomery County**. This is an existing discharge to the Schuylkill River.

The receiving stream is classified for the following uses: warm water fishery, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 based on an average flow of 9.057 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	15	25	30
(11-1 to 4-30)	25	40	50
Suspended Solids	30	45	60
Ammonia (as N)			
(5-1 to 10-31)	5.0		10.0
(11-1 to 4-30)	9.0		18.0

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Residual Chlorine	0.5		1.6
Fecal Coliform		200 colonies/100 ml as a geometric average	
Dissolved Oxygen		minimum of 5.0 mg/l at all times	
pH		within limits of 6.0—9.0 standard units at all times	
Total Lead	monitor/report		
Total Nickel	monitor/report		
Total Phenols	monitor/report		
Total Copper	monitor/report		
Total Zinc	monitor/report		
Total Mercury	monitor/report		
Free Cyanide	monitor/report		
Total Arsenic	monitor/report		
Hexavalent Chromium	monitor/report		
Total Silver	monitor/report		

*Northcentral Region: Environmental Program Manager, Water Management, 208 West Third Street, Suite 101, Williamsport, PA 17701-6510, (717) 327-3666.*

**PA 0208922.** SIC: 4952, **Woodward Township Sewage and Water Authority**, P. O. Box 6, Houtzdale, PA 16651.

This proposed action is to renew the NPDES permit. The discharge of treated sewage is at the existing location on Whiteside Run in Woodward Township, **Clearfield County**.

The receiving stream is classified for the following uses: cold water fishery and aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the proposed downstream potable water supply (PWS) considered during the evaluation is at Lock Haven located on the Susquehanna River.

The proposed effluent limits for Outfall 001 based on the existing design flow of 0.385 mgd are:

<i>Discharge Parameter</i>	<i>Concentrations (mg/l)</i>		
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Instantaneous Maximum<sup>2</sup></i>
pH (std units)		within the range 6.0—9.0	
Total Cl <sub>2</sub> Residual	monitor		monitor
CBOD <sub>5</sub>	25	40	50
TSS	30	45	60
Fecal Coliform (5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		2,000/100 ml as a geometric average	

*Other Conditions:* none

The EPA waiver is in effect.

**PA 0113913.** SIC: 4952, **Irvin's Tinware Company**, R. R. 1, Box 73, Mt. Pleasant Mills, PA 17853.

This proposed action is for renewal of an NPDES permit for discharge of treated sewage and treated groundwater to an unnamed tributary to North Branch Mahantango Creek in West Perry Township, **Snyder County**.

The receiving stream is classified for the following uses: cold water fishery and aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the downstream potable water supply (PWS) considered during the evaluation is the intake at Dauphin located approximately 2.8 miles downstream.

The proposed effluent limits for Outfall 001, based on a design flow of 0.0009 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25.0	50.0
Suspended Solids	30.0	60.0
pH		6.0—9.0 su
Chlorine Residual	1.0	2.3
Fecal Coliform (5-1 to 9-30)		200/100 ml as a geometric average
(10-1 to 4-30)		2,000/100 ml as a geometric average

The proposed effluent limits for Outfall 002, based on a design flow of 0.003 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>
Tetrachloroethylene	0.018
Ethylbenzene	monitor
Lead	monitor
Cadmium	monitor
Chromium	monitor
pH	6.0—9.0 su

The EPA waiver is in effect.

*Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**PA 0218154.** Sewage, **Partnership of Robert Gearhart, Deborah Bomberger and Anthony Tommasone**, 617 Portersville Road, Ellwood City, PA 16117.

This application is for issuance of an NPDES permit to discharge treated sewage from Lock 6 Landing Restaurant and Lounge Wastewater Treatment Plant in Industry, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Ohio River, which are classified as a warm water fishery with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Midland Borough Municipal Authority.

*Outfall 001:* new discharge, design flow of 0.003 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
pH	not less than 6.0 nor greater than 9.0			

*Other Conditions:*

The EPA waiver is in effect.

*Northwest Regional Office: Regional Manager, Water Management, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6942.*

**PA 0002216.** Sewage, **Concast Metal Products**, P. O. Box 816, Mars, PA 16046.

This application is for renewal of an NPDES permit to discharge existing treated sewage to Unnamed Tributary to Connoquenessing Creek in Adams Township. This is an existing discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is Zelenople Water Works on Connoquenessing Creek located at Zelenople, approximately 12 miles below point of discharge.

The proposed discharge limits for Outfall No. 001, based on a design flow of 5,200 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	50
TSS	30	60
Ammonia-Nitrogen (5-1 to 10-31)	1.8	3.6
(11-1 to 4-30)	5.4	10.8
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric average	
(10-1 to 4-30)	4,500/100 ml as a geometric average	
Total Residual Chlorine (Interim)	XX	
(Final)	1.0	2.5
pH	6.0—9.0 at all times	

XX = monitor and report

The EPA waiver is in effect.

**PA 0222844.** Industrial waste, SIC: 2813, **Ellwood Industrial Facilities Company**, 700 Moravia Street, New Castle, PA 16101.

This application is for a new NPDES permit, to discharge vacuum pump seal, water softener regenerant and air compressor condensate wastewater to the Shenango River in New Castle, **Lawrence County**. This is a new discharge.

The receiving water is classified for the following uses: warm water fishes, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is Beaver Falls Municipal Authority Eastvale Plant on the Beaver River located at Eastvale, approximately 20.5 miles below point of discharge.

The proposed discharge limits for Outfall No. 001 based on a design flow of .0216 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow (mgd)	monitor and report		
pH	6.0—9.0 at all times		

The EPA waiver is in effect.

**Proposed NPDES Permit Renewal Actions for Minor Sewage Discharges**

The following parties have applied to renew their current NPDES permits to allow the continued discharge of controlled wastewaters into the surface waters of this Commonwealth. The Department of Environmental Protection (Department) has made a tentative determination to renew these permits and proposes to issue them, subject to their current permit effluent limitations, and monitoring and reporting requirements, with appropriate and necessary updated requirements to reflect new or changed regulations and other requirements. The updates may include, but will not be limited to, applicable permit conditions and/or requirements addressing combined sewer overflows (CSOs), municipal sewage sludge management and total residual chlorine control (TRC). Major changes to or deviations from the terms of the existing permit will be documented and published with the final Department actions.

The EPA, Region III, Regional Administrator has waived the right to review or object to these proposed permit actions under the waiver provision 40 CFR 123.6E.

Persons wishing to comment on the proposed permits are invited to submit a statement to the Field Office indicated as the office responsible, within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding these applications and proposed permit actions. Comments should include the name, address and telephone number of the writer and a brief statement to inform the Field Office of the basis of the comment and the relevant facts upon which it is based. A public hearing may be held if the Field Office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit action. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit renewal application and related documents, proposed effluent limitations and special conditions, comments received and other information are on the Department's file. The documents may be inspected at, or a copy requested from, the Field Office that has been indicated above the application notice.

*Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

<i>NPDES No.</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Tributary Stream</i>	<i>New Permit Requirements</i>
PA 0060593	Wilbar Realty Sanitary Co. c/o Carl Kresge 1199 Laurel Run Road Wilkes-Barre, PA 18702-9979	Luzerne Rice Twp.	Nuangola Outlet to Little Wapwallopen Creek	TRC

**DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER**

**Applications under the Pennsylvania Clean Streams Law**

**(Part II Permits)**

The following permit applications and requests for plan approval have been received by the Department of Environmental Protection (Department). Persons objecting on the grounds of public or private interest to the approval of an application or submitted plan may file a written protest with the Department at the address indicated above each permit application or plan. Each written

protest should contain the following: name, address and telephone number; identification of the plan or application to which the protest is addressed and a concise statement in sufficient detail to inform the Department of the exact basis of the protest and the relevant facts upon which it is based. The Department may conduct a fact-finding hearing or an informal conference in response to any given protest. Each writer will be notified in writing of the time and place if a hearing or conference concerning the plan, action or application to which the protest relates is held. To insure consideration by the Department prior to final action on permit applications and proposed plans, initial protests and additions or amend-

ments to protests already filed should be filed within 15 calendar days from the date of this issue of the *Pennsylvania Bulletin*. A copy of each permit application and proposed plan is on file in the office indicated and is open to public inspection.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

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**Industrial waste and sewerage applications received under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)**

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*Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**WQM Permit No. 1099405.** Sewage, **W. Larry Rodgers, SRSTP**, 106 South Main St., Butler, PA 16003. This project is for the construction of a single residence sewage treatment plant in Penn Township, **Butler County**.

**WQM Permit No. 2099405.** Sewage, **William E. and Barbara J. DeRoss SRSTP**, 16405 Lynn Rd., Saegertown, PA 16433. This project is for the construction of a single residence sewage treatment plant in Hayfield Township, **Crawford County**.

**WQM Permit No. 2099406.** Sewage, **Robert J. Tanner SRSTP**, 68 Canal St., Albion, PA 16401. This project is for the construction of a single residence sewage treatment plant in Spring Township, **Crawford County**.

**WQM Permit No. 1099406.** Sewage, **Western Butler County Authority**, 607 Market Street, Zelienople, PA 16063. This project is for the upgrade and expansion of an existing water pollution control plant in Zelienople Borough, **Butler County**.

**WQM Permit No. 4299402.** Sewage, **Westline Inn, Inc.**, Box 137, Westline Road, Westline, PA 16751. This project is for the construction and operation of a small flow treatment facility located in Lafayette Township, **McKean County**.

**WQM Permit No. 6299405.** Sewage, **Boyles, Pepperman and Main SFTF**, 178C Eccles Road, Sugar Grove, PA 16350. This project is for the construction and operation of a small flow treatment facility located in Sugar Grove Township, **Warren County**.

*Northcentral Regional Office: 208 West Third Street, Suite 101, Grit Building, Williamsport, PA 17701.*

**WQM Permit No. 4999401.** Sewerage. Submitted by **Shamokin Coal Township Joint Sewer Authority**, R. D. 2, Box 35, Shamokin, PA 17872. This application is to construct and operate improvements to their wastewater treatment facility in Ralpho Township, **Northumberland County**. The application was received by the Northcentral Regional Office on March 26, 1999.

**WQM Permit No. 4999402.** Sewerage. Submitted by **Delaware Township Municipal Authority**, P. O. Box 80, Dewart, PA 17730. This application is to update their wastewater treatment system and will expand their gallon per day. The facility is located at Delaware Township, **Northumberland County**. The application was received by the Northcentral Regional Office on March 3, 1999.

**INDIVIDUAL PERMITS**

**(PAS)**

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**NPDES Individual**

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The following parties have applied for an NPDES permit to discharge stormwater from a proposed construction activity into the surface waters of this Commonwealth. Unless otherwise indicated, on the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Protection (Department) proposes to issue a permit to discharge, subject to certain limitations set forth in the permit and special conditions. These proposed determinations are tentative. Limitations are provided in the permit as erosion and sedimentation control measures and facilities which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA, Region III, Regional Administrator has waived the right to review or object to this proposed permit action under the waiver provision of 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the office noted above the application within 30 days from the date of this public notice. Comments reviewed within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held if the responsible office considers the public response significant.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The application and related documents, including the erosion and sedimentation control plan for the construction activity, are on file and may be inspected at the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

*Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

**NPDES Permit PAS10-G362.** Stormwater. **Dennis and Kathleen Wolfgang**, 206 Brownbacks Church Road, Spring City, PA 19475, has applied to discharge stormwater from a construction activity located in East Vincent Township, **Chester County**, to French Creek.

**NPDES Permit PAS10-T099.** Stormwater. **Lejenue Properties, Inc.**, 4070 Butler Pike, Suite 800, Plymouth Meeting, PA 19462, has applied to discharge stormwater from a construction activity located in Upper Providence Township, **Montgomery County**, to Schuylkill River.

**NPDES Permit PAS10-T016-R.** Stormwater. **The Cutler Group, Inc.**, P. O. Box 629, Horsham, PA 19044, has applied to discharge stormwater from a construction activity located in Montgomery Township, **Montgomery County**, to Park Creek.

*Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

*Carbon County Conservation District, District Manager, 5664 Interchange Road, Lehighton, PA 18235-5114, (610) 377-4894.*

**NPDES Permit PAS101319.** Stormwater. **Blue Mt. Ski Area**, Raymond C. Tuthill, P. O. Box 216, Palmerton, PA 18701, has applied to discharge stormwater from a construction activity located in Lower Towamensing Township, **Carbon County**, to Aquashicola Creek.

*Northampton County Conservation District, District Manager, R. R. 4, Nazareth, PA 18064-9211, (610) 746-1971.*

**NPDES Permit PAS10U111.** Stormwater. **Triple Net Investments VII, L. P., c/o J. G. Petrucci Company, Inc.**, 171 Rt. 173, Suite 201, Asbury, NJ 08802, has applied to discharge stormwater from a construction activity located in Bethlehem Township, **Northampton County**, to Monocacy Creek.

*Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 657-4707.*

*Cumberland County Conservation District, District Manager, 43 Brookwood Avenue, Suite 4, Carlisle, PA 17013, (717) 240-7812.*

**NPDES Permit PAS-10-H084.** Stormwater. **South Middleton Township Municipal Authority**, P. O. Box 8, Boiling Springs, PA 17007-0008, has applied to discharge stormwater from a construction activity located in South Middleton Township, **Cumberland County**, to Yellow Breeches Creek.

## SAFE DRINKING WATER

### Applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

*Southeast Regional Office: Sanitarian Regional Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

**A. 4699505.** Public water supply. **Morrison Coulter, President, Philadelphia Suburban Water Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010. This proposal involves the construction of a water treatment plant to treat water pumped from Rahns Well No. 2 in Perkiomen Township, **Montgomery County**.

**A. 1599507.** Public water supply. **Richard J. Blair, Junction Plaza Partnership**, 926 Cooperstown Road, Bryn Mawr, PA 19010. This proposal involves the installation of corrosion control and pH adjustment systems in Malvern Borough, **Chester County**.

*Northeast Regional Office: Sanitarian Regional Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2511.*

**Minor Amendment to 3546379.** Public water supply. **Far Away Springs**, Stanley F. Frompovicz, Jr., 7 Spruce

Street, Pine Grove, PA 17963. This proposal involves the movement of the gallon line from the second floor to the first floor of the facility. It is located in Pine Grove Township, **Schuylkill County**. *Engineer: Yourshaw Engineering Inc.*

**5499501.** Public water supply. **Eagle Springs Inc., Valley View Springs II**, Richard J. Withelder, Tremont, PA 17981. This proposal involves the addition of a spring source, Valley View Springs II. It is located in Hegins Township, **Schuylkill County**. *Engineer: Alfred Benesch and Company.*

*Southcentral Regional Office: Sanitarian Regional Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4708.*

**Permit No. 2899503.** Public water supply, **Mt. Rock Homes, Inc.**, Southampton Township, **Franklin County**. *Responsible Official: William K. Swarthout, President, 7650 Molly Pitcher Highway, Shippensburg, PA 17257-9093. Type of Facility: Application for a construction permit to authorize expansion of the existing Mt. Rock Manor Mobile Home Park. This phase of construction will include a new well, treatment facilities and distribution expansion. The well will be operated at a maximum rate of 72 gallons per minute. Treatment will include hypochlorite disinfection and cation exchange softening. Consulting Engineer: Dennis E. Black, P.E., Dennis E. Black Engineering, Inc., 2400 Philadelphia Ave., Chambersburg, PA 17201. Application received March 31, 1999.*

**Permit No. 3699502.** Public water supply, **East Donegal Twp. Municipal Authority**, East Donegal Township, **Lancaster County**. *Responsible Official: Thomas S. Ladue, P.E., Director of Municipal Services, Goodkind & O'Dea, Inc., P. O. Box 82, Maytown, PA 17550. Type of Facility: This application is for the addition of Well No. 2 as a source of supply, expansion of the existing treatment building for the addition of another ion exchange unit for nitrate treatment, changing the disinfection system and addition of transmission main to pipe Well No. 2 to the existing treatment building. Construction of a pump house for Well No. 2 will also be completed. Consulting Engineer: Thomas S. Ladue, P.E., Director of Municipal Services, Goodkind & O'Dea, Inc., P. O. Box 340, Carlisle, PA 17013. Application received March 3, 1999.*

**Permit No. 0699504. Citizens Utilities Water Co. of PA**, Amity Township, **Berks County**. *Responsible Official: Brian J. Hassinger, General Manager, 4 Wellington Blvd., P. O. Box 6342, Wyomissing, PA 19610-6342. Type of Facility: Booster pump station for Greenbriar Estates Subdivision. Consulting Engineer: Ralph S. Bucci, 408 Laurel Lane, Wallingford, PA 19086. Application received March 31, 1999.*

*Northwest Regional Office: Regional Manager, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6899.*

**A. 6299501.** Public water supply. **Wilderness Mobile Home Park**, Zimmerman Hill Road, Warren, PA 16365. This proposal involves the permitting of a new well as backup and future expansion of the park in Pleasant Township, **Warren County**.

**A. 2599503.** Public water supply. **Lakeview Estate Personal Care Home**, 12430 East Lake Road, North East, PA 16428. This proposal involves the permitting of an existing groundwater supply in North East Township, **Erie County**.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

### Preamble 1

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#### Acknowledgment of Notices of Intent to Remediate submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

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Sections 302, 303, 304 and 305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard, or who intend to remediate a site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, or a combination of the cleanup standards, or who receives approval of a special industrial area remediation identified under the act, will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified as proposed for remediation to a site-specific standard or as a special industrial area, the municipality, within which the site is located, may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period the municipality may request that the person identified, as the remediator of a site, develop and implement a public involvement plan. Requests to be involved, and comments, should be directed to the remediator of a site.

For further information concerning the content of a Notice of Intent to Remediate, contact the Environmental Cleanup Program Manager in the Department's Regional Office under which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southeast Regional Office: Environmental Cleanup Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**Metroplex Corporate Center**, Plymouth Township, **Montgomery County**. Kimberly L. Ward, Pennoni Associates, Inc., 3001 Market Street, Philadelphia, PA 19104, has submitted a Notice of Intent to Remediate site soils contaminated with asbestos. The applicant proposes to remediate the site to meet site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *Times Herald* on December 10, 1998. This is a corrected copy of the *Pennsylvania Bulletin* notice published February 6, 1999.

*Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager; 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.*

**Bet-Tech International, Inc./Former LTV Works, Parcel S-2 (Part of Industrial Tract)**, City of Aliquippa, **Beaver County**. Bet-Tech International, Inc./Former LTV Works, Parcel S-2 (Part of Industrial Tract), 1150 Broadhead Road, Monaca, PA 15061-2500, has submitted a Notice of Intent to Remediate soil and groundwater contaminated with heavy metals, PAHs and PHCs. The applicant proposes to remediate the site to meet the special industrial area. A summary of the Notice of Intent to Remediate was reported to have been published in the *Beaver County Times* on April of 1999.

*Northwest Regional Office: Craig Lobins, Environmental Cleanup Program Manager; 230 Chestnut Street, Meadville, PA 16335, (814) 332-6648.*

**Pontillo Landfill**, W. 16th St. and Pittsburgh Avenue, **Erie County**, City of Erie, has submitted a Notice of Intent to Remediate groundwater and soil. The site has been found to be contaminated with PCBs, lead, heavy metals, solvents, BTEX, PHCs and PAHs. The applicant proposes to remediate the site to meet the Statewide health and site-specific standard in a special industrial area. The Notice of Intent to Remediate was published in the *Erie Times News* on April 12, 1999.

## SOLID AND HAZARDOUS WASTE

### RESIDUAL WASTE PROCESSING FACILITIES

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**Applications received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to operate a solid waste processing or disposal area or site.**

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*Southwest Regional Office: Regional Solid Waste Manager; 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**A. 300491. EME Homer City Generation L. P.**, 18101 Von Karman Avenue, Suite 1700, Irvine, CA 92612-1046. EME Homer City Generation, L. P., 1750 Power Plant Road, Homer City, PA 15748-9558. Application for a residual waste disposal site permit amendment in **Indiana County**, Blacklick and Center Townships was received in the regional office on April 9, 1999.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

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**Applications submitted under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.**

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*Northeast Regional Office: Regional Solid Waste Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717) 826-2516.*

**Permit I. D. 100022. Chrin Brothers Sanitary Landfill, Chrin Brothers, Inc.**, 635 Industrial Drive, Easton, PA 18042. A major permit modification for the development of an overlay area for closure areas 1, 2 and 3 of this municipal waste landfill, located in Williams Township, **Northampton County**. All proposed activities will occur within the previously permitted 108 acres of the landfill. The application was received in the Regional Office on November 16, 1998; and was determined to be administratively complete as of December 1, 1998.

## AIR QUALITY

### Notice of Plan Approval and Operating Permit Applications

#### Nonmajor Sources and Modifications

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities. Although the sources covered by these applications may be located at a major facility, the sources being installed or modified do not trigger major new source review or prevention of significant deterioration requirements.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Offices identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to file protests or comments on the proposed plan approval and/or operating permits must submit the protest or comment within 30 days from the date of this notice. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any comments or protests filed with the Department's Regional Offices must include a concise statement of the objections to the issuance of the plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior to the date of the hearing.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121-143, the Federal Clean Air Act and regulations adopted under the act.

#### OPERATING PERMITS

**Applications received and intent to issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001-4015).**

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**06-313-004E: IFS Industries, Inc.** (P. O. Box 1053, Reading, PA 19603), for an adhesives manufacturing operation controlled by a fabric collector in Reading, **Berks County**.

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.*

**14-303-007A: Glenn O. Hawbaker, Inc.** (450 East College Avenue, Bellefonte, PA 16823), for operation of a drum mix asphalt concrete plant and associated air cleaning device (a fabric collector) in Spring Township, **Centre County**. This plant is subject to Subpart I of the Federal Standards of Performance for New Stationary Sources.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**10-313-028A: Indspec Chemical Corp.** (133 Main Street, Petrolia, PA 16050), for operation of resorcinol bagging flaking and packaging in Petrolia, **Butler County**.

**25-315-006A: International Paper Co.** (1540 East Lake Road, Erie, PA 16533), for operation of a bleach plant in Erie, **Erie County**.

**33-309-017A: Owens-Brockway Glass Container** (Route 219, E & R Building, Brockway, PA 15824), for operation of surface treatment glass containers in Crenshaw, Snyder Township, **Jefferson County**.

**PA-37-264A: Ellwood Quality Steels Co.** (700 Moravia Street, New Castle, PA 16101), for operation of a ladle furnace in New Castle, **Lawrence County**.

**37-309-046: Essroc Cement Corp.** (2nd Street, Bessemer, PA 16112), for operation of tire-derived fuel systems in Bessemer Borough, **Lawrence County**.

**PA-42-187A: Resting Acres Pet Cemetery, Inc.** (1353 South Avenue, Bradford, PA 16701), for operation of a crematory in Broward Township, **McKean County**.

**PA-61-016B: Pennzoil-Quaker State Co.** (2 Main Street, Rouseville, PA 16344), for operation of a wastewater drain system plant in Cornplanter Township, **Venango County**.

**PA-61-016C: Pennzoil-Quaker State Co.** (2 Main Street, Rouseville, PA 16344), for operation of a wax filter house steamer vacuum in Cornplanter Township, **Venango County**.

**61-399-007D: A. G. Industries, Inc.** (671 Colbert Avenue, Oil City, PA 16301), for operation of hard chromium electroplating tanks in Oil City, **Venango County**.

*City of Philadelphia: Air Management Services, 321 University Avenue, Philadelphia, PA 19104, (215) 823-7584.*

**S95-035: International Paper** (2100 East Bayberry Road, Philadelphia, PA 19116), for a synthetic minor operating permit for operation of a flexographic printing facility in **Philadelphia County**.

**S95-072: M. A. Bruder & Sons, Inc.** (52nd and Grays Avenue, Philadelphia, PA 19143), for a synthetic minor operating permit for operation of manufacturing paint for retail and commercial sales. Air emission sources include boilers, ball mills, let-down tanks, blend tanks and mixers controlled by baghouses in **Philadelphia County**.



**S95-074: Veterans Affairs Medical Center and Nursing Home Care Unit** (University and Woodland Avenues, Philadelphia, PA 19104), for a synthetic minor operating permit for operation of a hospital and nursing home. Air emission sources include boilers (three are rated at 29.4 MMBTU/hr), hot water heaters, emergency generators and ethylene oxide sterilizers in **Philadelphia County**.

**S97-013: Laurel Linen Service** (4601 West Girard Avenue, Philadelphia, PA 19131), for a synthetic minor operating permit for operation of a commercial laundry/linen supplier. Air emission source is a 16.7 MMBTU/hr boiler in **Philadelphia County**.

**S96-024: Saint Joseph's University** (5930 City Line Avenue, Philadelphia, PA 19131), for a synthetic minor operating permit for operation of a university providing education. Air emission sources include boilers (two rated at 13.4 MMBTU/hr and one rated at 20.7 MMBTU/hr), hot water heaters and emergency generators in **Philadelphia County**.

**S95-070: Henshell Corp.** (2922 N. 19th Street, Philadelphia, PA 19132), for a synthetic minor operating permit for operation of electrocoating and powder coating finishes to plastic and metal parts, primarily for the automotive and construction fastener industries. Air emission sources include boilers, a heater, coating process, ovens and pyrolysis cleaning furnace in **Philadelphia County**.

**V95-076: Newman and Co., Inc.** (6101 Tacony Street, Philadelphia, PA 19135), for a Title V operating permit for operation of a 118 MMBTU/hr boiler in **Philadelphia County**.

**V95-090: Park Towne Place Apartments** (2200 Ben Franklin Parkway, Philadelphia, PA 19130), for a Title V operating permit for operation of an apartment complex which includes two 20.8 MMBTU/hr boilers in **Philadelphia County**.

**V96-011: Lawrence-McFadden Co.** (7430 State Road, Philadelphia, PA 19136), for a Title V operating permit for operation of manufacturing industrial wood finish for kitchen cabinets, musical instruments, household and office furniture, wooden caskets and some special metal finishes. Air emission sources include boilers, solvent storage tanks and mixers in **Philadelphia County**.

#### PLAN APPROVALS

**Applications received and intent to issue Plan Approvals under the Air Pollution Control Act (35 P. S. §§ 4001—4015).**

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**06-1069G: East Penn Mfg. Co., Inc.** (P. O. Box 147, Lyon Station, PA 19536-0147), for construction of various lead/acid battery manufacturing sources controlled by a fabric collector in Richmond Township, **Berks County**. The sources are subject to 40 CFR Part 60, Subpart KK, Standards of Performance for New Stationary Sources.

**06-3074: Super Service Painting & Sandblasting** (2350 Camp Swatara Road, Myerstown, PA 17067), for installation of a new sandblasting operation in Bethel Township, **Berks County**.

**22-317-012A: Hershey Foods, Inc.** (25 West Chocolate Avenue, Hershey, PA 17033), for modification of the sugar conveying system in Derry Township, **Dauphin County**.

**67-320-022D: Fry Communications, Inc.** (800 West Church Road, Mechanicsburg, PA 17055), for installation of a heatset printing press with control at their Building No. 5 (Plant No. 3) in Manchester Township, **York County**.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**PA-16-134A: Car Mate Trailers, Inc.** (Route 66, Leeper, PA 16233), for minor modification of Operating Permit 16-318-006A to increase VOC emission limit from 10 tons/year to 20 tons/year based on production levels (11,700 units/year) in Farmington, **Clarion County**.

## MINING

### APPLICATIONS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of the application is available for inspection at the District mining office indicated above each application. Where a 401 water quality certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for the certification.

Written comments or objections, or requests for informal conferences on applications, may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the same address within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34 (relating to public notices of filing of permit applications, opportunity for comment, and informal conferences).

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. The NPDES permits will contain, at a minimum, technology-based effluent limitations (as described in the Department's regulations—25 Pa. Code §§ 77.522, 87.102, 88.92, 88.187, 88.242, 89.52 and 90.102) for iron, manganese, suspended solids, settleable solids, alkalinity and pH. In addition to the above, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit when necessary for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies which have requested review of the NPDES permit requirements for a particular mining activity

within the above-mentioned public comment period will be provided with a 30-day period to review and submit comments on those requirements.

Written comments or objections should contain the name, address and telephone number of persons submitting comments or objections; application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor desires to have the conference conducted in the locality of the proposed mining activities.

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

*Coal Applications Received*

**56960111.** Transfer from **Laura D. Coal, Inc. to Big J Mining, Inc.** (1842 Main Street, Hastings, PA 16646), commencement, operation and restoration of bituminous strip mine in Quemahoning and Stonycreek Townships, **Somerset County**, affecting 90.0 acres, receiving stream unnamed tributaries to and Stonycreek River. Application received April 9, 1999.

**11940102.** Permit Renewal, **E. P. Bender Coal Company, Inc.** (Main and Lehmier Streets, P. O. Box 594, Carrolltown, PA 15722), commencement, operation and restoration of bituminous strip-auger-coal refuse disposal mine in Reade Township, **Cambria County**, affecting 133.0 acres, receiving stream unnamed tributaries to Powell Run; Powell Run; and unnamed tributary to Clearfield Creek. Application received April 12, 1999.

*Greensburg District Office, R. D. 2, Box 603-C, Greensburg, PA 15601.*

**03960108. Dutch Run Coal, Inc.** (A02-366, Shelocta, PA 15774). Application received to change the land use from forestland and strip mined area to pastureland/land occasionally cut for hay at an existing bituminous surface/auger mining site located in Plumcreek Township, **Armstrong County**, affecting 39.6 acres. Receiving streams: unnamed tributary to Crooked Creek. Application received April 14, 1999.

**03890106. Walter L. Houser Coal Company, Inc.** (R. R. 9, Box 434, Kittanning, PA 16201). Renewal application received for continued reclamation of a bituminous strip auger mine located in Kittanning Township, **Armstrong County**, affecting 134 acres. Receiving streams: two unnamed tributaries to Mill Run and Mill Run and then Cowanshanock Creek. Renewal application received April 13, 1999.

**26890103R. Durant Excavating Company** (18 North Ross Street, Masontown, PA 15461-1764). Renewal application received for continued operation and reclamation of a bituminous surface mine located in Nicholson Township, **Fayette County**. Receiving stream: unnamed tributary to Cats Run. Renewal application received April 14, 1999.

*Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.*

**41940101. Fisher Mining Company** (460 Market Street, Williamsport, PA 17701), major revision to an existing bituminous surface mine permit for a change in permit acreage from 616.0 to 640.0 acres, Pine Township, **Clearfield County**. Receiving streams: Buckeye Run,

Otter Run, Little Pine Creek, Pine Creek, West Branch Susquehanna River, Chesapeake Bay. Application received March 26, 1999.

**17940116. Moravian Run Reclamation Co., Inc.** (605 Sheridan Drive, Clearfield, PA 16830), transfer of an existing bituminous surface mine permit from Al Hamilton Contracting Company, Penn Township, **Clearfield County** affecting 247.0 acres. Receiving streams Poplar Run to Bell Run to West Branch Susquehanna River. Application received March 31, 1999.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

**33990907. Dale Hollobaugh** (R. D. 1, Box 31, Penfield, PA 15849). Commencement, operation and restoration of an incidental coal extraction operation in Washington Township, **Jefferson County** affecting 15 acres. Receiving stream: Wolf Run. Application to include a landuse change from forestland and unmanaged natural habitat to commercial/industrial on lands of Steve A. and Jendi A. Gertz and Virginia Moore and Gloria Austin. Application received April 1, 1999.

**16940107. RFI Energy, Inc.** (555 Philadelphia Street, Indiana, PA 15701). Transfer of an existing bituminous surface strip operation in Perry Township, **Clarion County** affecting 224 acres. Receiving streams: Five unnamed tributaries to Cherry Run. Transfer from C & K Coal Company. Application received April 9, 1999.

**33940101. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA 15767). Renewal of an existing bituminous strip and auger operation in Oliver Township, **Jefferson County** affecting 175.0 acres. Receiving streams: unnamed tributary to Hadden Run, Hadden Run, Clutch Run, unnamed tributary to Little Sandy Creek, Little Sandy Creek. Application for reclamation only. Application received April 9, 1999.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**49861311T. A. L. Coal Co.** (672 Bear Valley Avenue, Shamokin, PA 17872), transfer of an existing anthracite underground mine operation from Sheldon Derck in Zerbe Township, **Northumberland County** affecting 1.4 acres. Receiving stream—none. Application received April 5, 1999.

**54793009R3. Coal Contractors (1991), Inc.** (Gowen Mine, Fern Glen, PA 18241), renewal of an existing anthracite surface mine operation in Beaver, Black Creek and North Union Townships, **Columbia, Luzerne and Schuylkill Counties** affecting 991.3 acres. Receiving stream—Black Creek. Application received April 6, 1999.

**54830107C3. Selkirk Mining Company** (200 East Norwegian Street, Pottsville, PA 17901), correction to an existing anthracite surface mine operation to include fly ash disposal in Branch and Reilly Townships, **Schuylkill County** affecting 2,207.0 acres. Receiving stream—West Branch Schuylkill River. Application received April 8, 1999.

**54900101C3. Blackwood, Inc.** (P. O. Box 639, Wind Gap, PA 18091), correction to an existing anthracite surface mine operation in Reilly, Branch and Tremont Townships, **Schuylkill County** affecting 1,847.6 acres. Receiving stream—Panther and Swatara Creeks. Application received April 14, 1999.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

*Noncoal Applications Received*

**4877SM10. Lakeland Sand & Gravel, Inc.** (7013 Atlantic Lake Road, Hartstown, PA 16131). Transfer of an

existing sand and gravel operation in East Fallowfield Township, **Crawford County**, affecting 10 acres. Receiving streams: unnamed run to Pymatuning Swamp to Crooked Creek to the Shenango River. Transfer from Joseph Arendash. Application received April 8, 1999.

**3075SM6. Atlantic States Materials of PA, Inc.** (P. O. Box 269, Mercer, PA 16137). Revision to an existing sand and gravel operation in Worth Township and West Liberty Borough, **Butler County** affecting 114.5 acres. Receiving streams: Hogue Run, Black Run and Slippery Rock Creek. Revision to include a postmining land use change to leave a lake on lands of Atlantic States Materials of PA, Inc. Application received March 30, 1999.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**28990301. Fayetteville Contractors, Inc.** (3185 Lincoln Way East, P. O. Box FCI, Fayetteville, PA 17222), commencement, operation and restoration of a quarry operation in Antrim Township, **Franklin County** affecting 20.88 acres, receiving stream—Muddy Run. Application received April 6, 1999.

**48990301. IMS Waylite, Inc.** (Box 5165, Easton Road, Bethlehem, PA 18015), commencement, operation and restoration of a quarry operation in the City of Bethlehem, **Northampton County** affecting 57.0 acres, receiving stream—none. Application received April 14, 1999.

**48990302. IMS Waylite, Inc.** (Box 5165, Easton Road, Bethlehem, PA 18015), commencement, operation and restoration of a quarry operation in the City of Bethlehem, **Northampton County** affecting 25.0 acres, receiving stream—none. Application received April 14, 1999.

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

*Industrial Minerals NPDES Permit Renewal Applications Received*

**56940302. Keystone Lime Company** (P. O. Box 278, Springs, PA 15562), renewal of NPDES Permit No. PA0212822, Elk Lick Township, **Somerset County**, receiving streams High Point Lake to Glade Run; Enos Run. NPDES renewal application received April 9, 1999.

## APPLICATIONS RECEIVED UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT

### ENCROACHMENTS

The following permit applications and requests for Environmental Assessment approval and requests for water quality certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)), requires the State to certify that the involved projects will not violate the applicable provisions of 33 U.S.C.A. §§ 1311—1313, 1316 and 1317 as well as relevant State requirements. Initial requests for 401 certification will be published concurrently with the permit application. Persons objecting to approval of a request for certification under section 401 or to the issuance of a Dam Safety or Encroachment Permit or the approval of Environmental Assessments must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted above the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should

contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

### Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401 of the Federal Water Pollution Control Act.

*Southeast Regional Office: Program Manager, Water Management Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**E23-380.** Encroachment. **Darby Borough**, 821 Summit Street, Darby, PA 19023. To construct and maintain utility supports for a FEMA sponsored project which will provide appurtenant household utility floodproofing for individual dwellings. This work will be performed for homes along the 100—1400 block of Chestnut Street situated in the 100-year floodplain of Darby Creek (TSF-MF) (Lansdowne, PA Quadrangle N: 8.5 inches; W: 2.5 inches) in Darby Borough, **Delaware County**.

**E15-616.** Encroachment. **General Armistead, L. P.**, 137 Commons Court, Chadds Ford, PA 19317. To construct and maintain a bridge having a clear span of 12.52 feet and an average underclearance of 3.13 feet across Lionville Run (CWF) to provide access to the rear portion of a commercial site. Work also includes minor grading in the floodway and removing an existing footbridge. This site is located 1,000 feet southeast from intersection of Route 100 and Fairview Road (Downingtown, PA Quadrangle N: 6.9 inches; W: 1.15 inches) in West Whiteland Township, **Chester County**.

**E46-836.** Encroachment. **PA Turnpike Commission**, P. O. Box 67676, Harrisburg, PA 17106-7676. To construct and maintain a slip ramp consisting of on-ramp (B) from west bound Turnpike (I-276) to a signalized intersection at Virginia Drive, opposite Office Center Drive and off-ramp (A) from the same intersection to the west bound Turnpike. This site is located at the existing Fort Washington Interchange of PA Turnpike (Ambler, PA Quadrangle beginning at N: 2 inches; W: 7.5 inches and ending at N: 2.7 inches; W: 5.8 inches) in Upper Dublin Township, **Montgomery County**. Work consists of:

1. To fill 0.07 acre of wetlands (PFO) for the construction of west bound on-ramp (B) at the station 814+00 of the PA Turnpike;
2. To extend the existing 6-foot by 4-foot box culvert in and along an unnamed tributary to Pine Run (TSF) beneath Turnpike Station 828+58 by installing a 70 linear foot extension of 6-foot by 4-foot box culvert at the downstream end to facilitate construction of the on-ramp (B);
3. To extend the existing 24-inch CMP storm sewer beneath Turnpike Station 835+25 by installing an additional 120 linear feet of 24-inch pipe at the downstream end for the construction of the on-ramp (B);
4. To fill 0.07 acre of wetlands (PEM) for the construction of the west bound on-ramp (B) at Station 52+00 and temporary impact 0.08 acre (PEM) wetland;
5. To relocate approximately 460 linear feet of an unnamed tributary to Pine Run (TSF) along the east side of off-ramp (A) from Station 22+00 to Station 27+30;
6. To install approximately 100 linear feet of 18-foot by 7-foot box culvert, with a 1 foot depressed bottom in and

along Pine Run, beneath new Ramps A and B at the Station 27+35 near the intersection of Virginia Drive;

7. To construct 60 linear feet of on-ramp (B) and off-ramp (A) within the 100 year floodplain of Pine Run from Station 26+00 to the intersection of Virginia Drive.

**E46-841.** Encroachment. **Upper Dublin Township**, 801 Loch Alsh Ave., Fort Washington, PA 19034. To improve, widen and maintain Virginia Drive and the intersection of Virginia Drive and Office Center Drive within the 100-year floodplain of Pine Run (TSF) in conjunction with construction of a slip ramp for PA Turnpike at the existing Fort Washington interchange (Ambler, PA Quadrangle beginning at N: 2.2 inches; W: 7.4 inches and ending at N: 2.8 inches; W: 6.3 inches) in Upper Dublin Township, **Montgomery County**. Work consists of:

1. Extending a 42-inch by 72-inch squashed C.M.P. pipe in and along an unnamed tributary to Pine Run beneath Virginia Drive at Station 504+84 by installing a 16 linear foot extension of 42-inch by 72-inch C.M.P. at the downstream end of the aforementioned culvert.

2. Widening Virginia Drive and Office Center Drive within the 100-year floodplain of Pine Run.

**E51-176.** Encroachment. **City of Philadelphia Capital Program Office**, 1515 Arch Street, 11th Floor, One Parkway Building, Philadelphia, PA 19102. To modify, operate and maintain approximately 2,700 linear feet of the Manayunk Canal (WWF) situated within the 100-year floodplain of the Schuylkill River. The proposed Phase II Manayunk Canal Reconstruction Project consists of the following activities:

1. To remove an existing deteriorated timber and stone retaining wall along the southern bank of the canal and to install a steel sheet piling wall;

2. To repair and reconstruct three sections of approximately 800 feet of existing stone and concrete retaining wall along the northern bank and 270 feet along the southern bank of the canal;

3. To reconstruct the existing 1,100 foot long timber boardwalk and bulkhead along the northern side of the canal between Gay Street and Green Lane, and east and west of the intersection of Green Lane and Main Street;

4. To remove sediment from the bottom of the canal in the vicinity of Green Lane Bridge.

This project also includes installation of a temporary Portadam cofferdam structure. The proposed site is located between the Green Lane Bridge and the intersection of Lock Street and Main Street (Germantown, PA Quadrangle N: 4.3 inches; W: 13.6 inches) in the City and **County of Philadelphia**.

*Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.*

**E22-400.** Encroachment. **Eugene and Sandra Mulitsch**, 2585 Morgan Hill Rd., Easton, PA 18042. To construct and maintain a bridge having a span of 16 feet and a clearance of 4 feet across the channel of Shippen Run at a point along Shippen Dam Road (Millersburg, PA Quadrangle N: 9.9 inches; W: 11.6 inches) for the purpose of providing access to a home in Upper Paxton Township, **Dauphin County**.

**E38-124.** Encroachment. **Lebanon Valley College**, Robert Hamilton, 101 N. College Ave., Annville, PA 17003. To relocate approximately 420 feet of a tributary to the

Quittapahilla Creek for construction of a stormwater management retention pond at the Lebanon Valley College. The purpose of the project is to expand athletic facilities and to provide additional parking located on the north side of the campus (Palmyra, PA Quadrangle N: 15.4 inches; W: 1.75 inches) in Annville Township, **Lebanon County**. The permittee is required to provide 0.25 acre of wetland mitigation on site and 840 feet of off-site stream enhancement on the Quittapahilla Creek.

*Southwest Regional Office: Soils and Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E32-401.** Encroachment. **Steven A. White**, 1793 1/2 Getty Avenue, Indiana, PA 15701. To construct and maintain a single span bridge having a normal span of 24.0 feet and an underclearance of 3.0 feet across Cheese Run (CWF) for the purpose of providing access to a proposed residential dwelling. The project is located on the southwest side of T-412, approximately 800 feet west of Trim Tree Road (T-430) (Ernest, PA Quadrangle N: 4.25 inches; W: 14.0 inches) in Armstrong Township, **Westmoreland County**.

**E26-254.** Encroachment. **Roy F. Gazzam**, 4009 Edge Road, Brentwood, PA 15227-3411. To construct and maintain a single 12.9-foot x 8.3-foot structural plate pipe-arch culvert in Crabapple Run (WWF) for the purpose of providing access to a residence. The project is located on R. R. 669, approximately 0.44 mile west of its intersection with S. R. 0051 (Fayette City, PA Quadrangle N: 5.1 inches; W: 4.0 inches) in Franklin Township, **Fayette County**.

**E65-721.** Encroachment. **Westmoreland County Industrial Development Corporation**, 601 Courthouse Square, 2 North Main Street, Greensburg, PA 15601. To place and maintain fill in 0.86 acre of PEM wetlands and 0.9 acre of PEM replacement wetlands. This project is associated with the development of a 50 acre parcel in an existing industrial park. The project is in the watershed of an unnamed tributary to the Youghiogheny River (WWF) (Smithton, PA Quadrangle N: 9.3 inches; W: 17.0 inches) in South Huntingdon Township, **Westmoreland County**.

**E65-722.** Encroachment. **Pennsylvania Department of Transportation**, Engineering District 12-0, Box 459, Uniontown, PA 15401. To remove the existing structure and to construct and maintain a precast box culvert having a single span of 4.27 M and an underclearance of 1.45 M (invert depressed 0.3 M) in an unnamed tributary to McGee Run. The structure is located on S. R. 217, Section 01R at a point approximately 3 miles north of Kingston (Derry, PA Quadrangle N: 14.0 inches; W: 7.00 inches) in Derry Borough, **Westmoreland County**.

*Northwest Regional Office: Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**E10-279.** Encroachment. **Jeffrey L. Domhoff**, 105 Ziegler Street, Zelienople, PA 16063. To construct and maintain a two span steel I-beam and wooden deck bridge with each span measuring 20 feet wide with a maximum underclearance of 7 feet across Semiconon Run (CWF) for private residential access. The project is located across Semiconon Run approximately 3,400 feet southwest of the intersection of Dick Road (SR 3029) and Purvis Road (County Lane Road SR 3034) (Evans City, PA Quadrangle N: 20.1 inches; W: 3.8 inches) located in Connoquenessing Township, **Butler County**.

**E10-298.** Encroachment. **Cranberry Township**, 2525 Rochester Road, Cranberry Township, PA 16066-6499. To remove an existing culvert and to construct and maintain

approximately 280 feet of stream enclosure consisting of a 49-inch-wide by 33-inch-high CM pipe arch and a 24-inch-diameter HDPE pipe and excavation of approximately 80 feet of stream channel extending downstream of the proposed enclosure. This work is associated with the widening and drainage improvements along approximately 3,300 feet of Peters Road extending east from the Franklin Road (Mars, PA Quadrangle N: 14.5 inches; W: 9.4 inches) located in Cranberry Township, **Butler County**.

**E10-299.** Encroachment. **Butler County**, P. O. Box 1208, Butler, PA 16003. To remove the existing structure and to construct and maintain a steel plate girder bridge with a single clear span of 115 feet and a minimum underclearance of 15.5 feet on Mercer Road across Connoquenessing Creek (WWF). The bridge is located on Mercer Road across Connoquenessing Creek approximately 4,000 feet south of the intersection of Mercer Road and SR 0019 (Evans City, PA Quadrangle N: 9.8 inches; W: 17.2 inches) located in Harmony Borough and Jackson Township, **Butler County**.

**E61-223.** Encroachment. **Venango County**, 1174 Elk Street, Franklin, PA 16323. To remove the existing bridge (McCann Bridge) and to construct and maintain a precast reinforced concrete adjacent box beam bridge having a clear, normal span of 12.327 meters and a minimum underclearance of 2.428 meters on T-318 (Nogle Road) across Little Sandy Creek (CWF, trout stocked and wild trout). This project is located on T-318 (Nogle Road) across Little Sandy Creek approximately 153 meters north of the intersection of T-318 (Nogle Road) and SR 3024 (Utica, PA Quadrangle N: 1.6 inches; W: 9.5 inches) located in French Creek Township, **Venango County**.

**ACTIONS**

**FINAL ACTIONS TAKEN UNDER THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT**

[National Pollution Discharge Elimination System Program (NPDES)]

**DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER (Part I Permits)**

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications and requests for plan approval and has issued the following significant orders.

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel

Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

**Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).**

*Northeast Regional Office: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**Permit No. 4099401.** Sewerage. **Can Do, Inc.**, 1 South Church Street, Hazleton, PA 18201-6200. Permit to construct and operate a sewage pumping station and a sanitary sewer collection and conveyance system for Humboldt Industrial Park West, located in East Union Township, **Schuylkill County**, and Hazle Township, **Luzerne County**.

**NPDES Permit No. PA-0070092.** Sewerage. **John M. Yetter, t/a Evergreen Village Mobile Home Park**, R. R. 5, Box 5308, East Stroudsburg, PA 18301, is authorized to discharge from a facility located in Upper Mt. Bethel Township, **Northampton County**, to an unnamed Tributary of Allegheny Creek.

**NPDES Permit No. PA-0060674.** Sewerage. **The Guided Tours Camp Lee Mar, Inc.**, Route 590, Lackawaxen, PA 18435, is authorized to discharge from a facility located in Lackawaxen Township, **Pike County**, to an unnamed tributary to Lord's Creek.

**NPDES Permit No. PA-0063223.** Sewerage. **Martha J. Vetter**, P. O. Box 152, Damascus, PA 18415, is authorized to discharge from a facility located in Damascus Township, **Wayne County**, to Delaware River.

*Southeast Regional Office: Regional Manager, Water Management, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

**NPDES Permit No. PA0055913.** Industrial waste. **Corco Chemical Corporation**, Tyburn Road and Cedar Lane, Fairless Hills, PA 19030.

The following notice reflects changes to the notice published in the March 6, 1999, *Pennsylvania Bulletin*:

The proposed effluent limits for Outfall 002, based on an average flow of 115,000 gallons per day are revised as follows using more effluent analysis data:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Tetrachloroethylene	monitor	monitor	
Trichloroethylene	monitor	monitor	
Total Iron	monitor	monitor	
Total Manganese	monitor	monitor	
Total Zinc	monitor	monitor	
Total Aluminum	monitor	monitor	
Temperature			110°F
pH	within limits of 6.0—9.0 standard units at all times		

*Southcentral Regional Office: Regional Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.*

**NPDES Permit No. PAG043609.** Sewerage. **William D. Baker**, 2305 Pinchot Road, Saxton, PA 16678, is authorized to discharge from a facility located in Liberty Township, **Bedford County** to an unnamed tributary to the Juniata River.

**NPDES Permit No. PA0021539.** Sewerage. **Borough of Williamsburg**, 305 East Second Street, Williamsburg, PA 16693-1041, is authorized to discharge from a facility located in Catherine Township, **Blair County** to the receiving waters named Frankstown Branch.

**NPDES Permit No. PA0026280.** Sewerage. **Borough of Lewistown**, Two East Third Street, Lewistown, PA 17044, is authorized to discharge from a facility located in Lewistown Borough, **Mifflin County** to the receiving waters named Juniata River.

**NPDES Permit No. PA0085367.** Sewerage. **Sill's Family Campground**, P. O. Box 566, Adamstown, PA 19501-0566, is authorized to discharge from a facility located in Brecknock Township, **Lancaster County** to the receiving waters named Little Muddy Creek.

**Permit No. 2198411.** Sewerage. **Borough of Shippensburg**, 60 West Burd Street, Shippensburg, PA 17257. This permit approves the modification of sludge dewatering facility in Southhampton Township, **Cumberland County**.

**Permit No. 0687428 (99-1).** Sewerage. **Berks Properties, Inc.**, 2620 Egypt Road, Norristown, PA 19403. This permit approves the modification of sewage treatment facilities in Hereford Township, **Berks County**.

**Permit No. 2299401.** Sewerage. **Derry Township Municipal Authority**, P. O. Box 447, Hershey, PA 17033-0447. This permit approves the modification of sewage treatment facilities in Derry Township, **Dauphin County**.

**Permit No. 2198410.** Sewerage. **Mr. and Mrs. Herbert Roth**, 8 West Hatchery Road, Newville, PA 17241. This permit approves the construction of sewage treatment facilities in North Newton Township, **Cumberland County**.

*Northcentral Regional Office: 208 West Third Street, Suite 101, Grit Building, Williamsport, PA 17701.*

**NPDES Permit No. PA0022195.** Sewerage. **Catawissa Borough**, P. O. Box 44, Catawissa, PA 17820-0044. Renewal granted to Catawissa Borough to discharge treated sewage from facility located at Catawissa Borough, **Columbia County**.

**NPDES Permit No. PA0110272.** Sewerage. **Cogan Valley Farms**, 480 Route 973 West, Cogan Station, PA 17728. Renewal granted to Cogan Valley Farms to discharge treated sewage from facility located at Hepburn Township, **Lycoming County**.

**NPDES Permit No. PA0208566.** Industrial waste. **BTR Inc.**, P. O. Box 355, Milton, PA 17847. Applicant granted permission to discharge from facility (Milton 32 Truckstop) located at Turbot Township, **Northumberland County**.

*Southwest Regional Office: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**NPDES Permit No. PAS206108.** Industrial waste. **Crown Cork & Seal Company, Inc.**, 1840 Baldrige Street, Connellsville, PA 15425, is authorized to discharge from a facility located at South Connellsville, **Fayette County** to receiving waters named Youghiogheny River.

**NPDES Permit No. PA0096083.** Sewerage. **Connellsville Area School District**, 125 North Seventh Street, Connellsville, PA 15425, is authorized to discharge from a facility located at Dunbar Junior High West STP, Dunbar Township, **Fayette County** to receiving waters named Opossum Run.

**Permit No. 5672401-A1.** Sewerage, **The Upper Stonycreek Joint Municipal Authority**, P. O. Box 24, Hooversville, PA 15936. Construction of treatment plant upgrade and expansion and pump station improvements located in Quemahoning Township, **Somerset County** to serve Hooversville Area.

**Permit No. 6583401-A3.** Sewerage, **The Hempfield Township Municipal Authority**. Construction of belt filter press replacement located in Hempfield Township, **Westmoreland County**, to serve New Stanton Water Pollution Control Plant.

*Northwest Regional Office: Regional Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.*

**WQM Permit No. 3399401.** Sewerage. **Sykesville Borough Council**, 21 East Main Street, Sykesville, PA 15865. This project is for the construction and operation of a wastewater collection and treatment facility in Sykesville Borough, Winslow Township and Henderson Township, **Jefferson County**.

**WQM Permit No. 2598417.** Sewerage. **Scenic Heights Subdivision SFTF, East**, John Afton, 7616 Knoyle Road, Erie, PA 16510. This project is for the construction and operation of a small flow treatment facility located in Venango Township, **Erie County**.

#### **DISCHARGE OF CONTROLLED INDUSTRIAL WASTE AND SEWERAGE WASTEWATER FROM OIL AND GAS ACTIVITIES**

*Southwest Regional Office: Regional Oil and Gas Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222, (412) 442-4024.*

**NPDES Permit No. PA0218073.** Industrial, **Belden and Blake Corporation**, 22811 Titusville Road, Pleasantville, PA 16341. Approval granted to discharge treated industrial waste from a facility in East Huntingdon Township, **Westmoreland County** into Jacobs Creek.

#### **INDIVIDUAL PERMITS**

##### **(PAS)**

The following NPDES Individual Permits for discharges of stormwater from construction activities have been issued.

*Southeast Regional Office: Regional Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428-2233, (610) 832-6130.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10-G355	James Mark P. O. Box 861 New London, PA 19360	East Nottingham Township Chester County	Big Elk Creek
PAS10-T079	Galbone Brothers Development 1030 West Germantown Pike P. O. Box 287 Fairview Village, PA 19409	Skippack Township Montgomery County	Unnamed Tributary to Skippack Creek

*Northeast Regional Office: Regional Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Stream</i>
PAS10Q008-R	Kay Builders 5440 Hamilton Blvd. Wescosville, PA 18106	Lehigh County Lower Macungie Township	Little Lehigh Creek

*Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4707.*

**PAS-10-M028-R.** Individual NPDES. **Quincy Methodist Home**, P. O. Box 217, Quincy, PA 17247-0217. To implement an erosion and sedimentation control plan for the construction of Quincy Nursing Home on 170 acres in Quincy Township, **Franklin County**. The project is located in Quincy Village (Waynesboro, PA Quadrangle N: 9.8 inches; W: 11.5 inches). Drainage will be to Little Antietam Creek.

**PAS-10-O-016-R.** Individual NPDES. **Jalyn Developers**, 148 Brick Church Road, Leola, PA 17540. To implement an erosion and sedimentation control plan for Glen Oaks Residential Subdivision on 130.7 acres in Salisbury Township, **Lancaster County**. The project is located on the east side of Gault Road and south of Northeimer Road. Drainage will be to Pequea Creek.

**PAS-10-O-077.** Individual NPDES. **Clarence R. Wenger**, 1011 Woodland Drive, Quarryville, PA 17566. To implement an erosion and sedimentation control plan for the Furniss Hill Farms residential subdivision on 43.35 acres in Fulton Township, **Lancaster County**. The project is located along both sides of Furniss Road (SR 3004), and on the east side of Westbrook Road (T-462) (Wakefield, PA Quadrangle N: 5.5 inches; W: 8.5 inches). Drainage will be to a tributary of Puddle Duck Creek.

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**INDIVIDUAL PERMITS  
(PAR)**

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**Approvals to Use NPDES and/or Other General Permits**

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The following parties have submitted Notices of Intent (NOIs) for Coverage under (1) General NPDES Permit(s) to discharge wastewater into the surface waters of this Commonwealth. The approval for coverage under these general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in the general permit; (2) General Permit(s) for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in Pennsylvania. The approval of coverage for land application of sewage sludge or residential septage under these general permits is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective general permit. The Department of Environmental Protection approves the following coverages under the specified General Permit.

The EPA Region III Regional Administrator has waived the right to review or object to this permit action under the waiver provision: 40 CFR 123.24.

The application and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted.

*List of NPDES and/or other General Permit Type*

PAG-1	General Permit For Discharges From Stripper Oil Well Facilities
PAG-2	General Permit For Discharges of Stormwater From Construction Activities
PAG-3	General Permit For Discharges of Stormwater From Industrial Activities
PAG-4	General Permit For Discharges From Single Residence Sewage Treatment Plant
PAG-5	General Permit For Discharges From Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit For Wet Weather Overflow Discharges From Combined Sewer Systems
PAG-7	General Permit For Beneficial Use of Exceptional Quality Sewage Sludge By Land Application

*List of NPDES and/or other  
General Permit Type*

PAG-8 General Permit For Beneficial Use of Non-Exceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site

PAG-9 General Permit For Beneficial Use of Residential Septage By Land Application to Agricultural Land, Forest or a Land Reclamation Site

*General Permit Type—PAG-2*

*Facility Location*

<i>County and Municipality</i>	<i>Permit No.</i>	<i>Applicant's Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Schuylkill Township Chester County	PAR10-G301	Thomas Cosgrove and Mary Selan 1030 Township Line Road Phoenixville, PA 19460	French Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Lower Oxford Township Chester County	PAR10-G305	Peoples Bank of Oxford P. O. Box 500 Oxford, PA 19363	Leeert Run and Hayes Run	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
East Caln Township Chester County	PAR10-G310	Downingtown Market Associates, LP 323-234 North 22nd Street Philadelphia, PA 19103	Parke Run	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Thornbury Township Chester County	PAR10-G318	Thorncroft Woods Development, Inc. 4 Raven Drive Chadds Ford, PA 19317	Unnamed Tributary to East Branch Chester Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Bethel Township Delaware County	PAR10-J152	Gilmon Development 510 Philadelphia Pike Wilmington, DE	South Branch Naamons Creek	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Upper Merion Township Montgomery County	PAR10-T531	Brandywine Operating Partnership LP 14 Campus Blvd., Suite 100 Newtown Square, PA 19073	Trout Run	Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Northampton County Bethlehem Township	PAR10U085-1	Victoria Calantoni Nancy Run Estates Family Limited Partnership 6065 William Penn Highway Easton, PA 18045	Lehigh River (U.N.T.)	Northampton Cons. Dist. (610) 746-1971
Luzerne County Wright Township	PAR10R181	Anthony Biago (Summit Meadow Estates) 456 South Main Rd. Mountaintop, PA 18707	Big Wapwallopen Creek	Luzerne Cons. Dist. (570) 674-7991
Bern Township Berks County	PAR-10-C260	Easy Does It Community Center Easy Does It Inc. 647 Walnut Street Reading, PA 19601	UNT Plum Creek	Berks County CD P. O. Box 520 1238 County Welfare Road Leesport, PA 19533 (610) 372-4657
Middlesex Township North Middleton Township Cumberland County	PAR-10-H196	Pamay Development Co. Inc. 5140 Trindle Road Mechanicsburg, PA 17055	Conodoguinete Creek	Cumberland County CD 43 Brookwood Avenue, Suite 4 Carlisle, PA 17013 (717) 40-7812
Derry Township Dauphin County	PAR-10-I170	Shaffer Gelder Dev. Co. 1345 E. Chocolate Ave. P. O. Box 710 Hershey, PA 17033	Swatara Creek	Dauphin County CD 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100



<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant's Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Lower Paxton Township Dauphin County	PAR-10-I192	Dauphin Homes, Inc. 5851 Union Deposit Road Harrisburg, PA 17111	Beaver Creek	Dauphin County CD 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
Swatara Township Dauphin County	PAR-10-I179	Capitol Ridge Dev. Corp. 220 N. 72nd Street Harrisburg, PA 17111	Beaver Creek	Dauphin County CD 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100
West Hanover Township Dauphin County	PAR-10-I181	Houck Properties 7464 Linglestown Road Harrisburg, PA 17112	Beaver Creek	Dauphin County CD 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100

*General Permit Type—PAG-3*

<i>Facility Location County and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Stream or Body of Water</i>	<i>Contact Office and Telephone No.</i>
Lackawanna County Clarks Summit Borough	PAR232238	Ato Findley, Inc. 11320 Watertown Plank Rd. Wauwatosa, WI 53226	Reynolds Pond	Northeast Office 2 Public Square Wilkes-Barre, PA 18711 (570) 826-2511
Lackawanna County Taylor Borough	PAR232221	Taylor Chemical, Inc. Lackawanna County 10 Stauffer Ind. Park Taylor, PA 18517	Keyser Creek to Lackawanna River	Northeast Office 2 Public Square Wilkes-Barre, PA 18711 (570) 826-2511
Luzerne County Wright Township	PAR802207	Boise Locomotive P. O. Box 27 Crestwood Ind. Park Mountain Top, PA 18707	N/A	Northeast Office 2 Public Square Wilkes-Barre, PA 18711 (570) 826-2511
Northampton County Easton City	PAR602213	Jacob Stein Easton Iron & Metal Co., Inc. 1100 Bushkill Drive Easton, PA 18042-1437	Delaware River	Northeast Office 2 Public Square Wilkes-Barre, PA 18711 (570) 826-2511
Schuylkill County Ringtown Borough	PAR212220	Ringtown Wilbert Vault Works, Inc. P. O. Box 215 Ringtown, PA 17967-0215	Little Catawissa Creek	Northeast Office 2 Public Square Wilkes-Barre, PA 18711 (570) 826-2511

*General Permit Type—PAG 7*

<i>Facility Location County and Municipality (If Applicable)</i>	<i>General Permit No.</i>	<i>Applicant Name and Address</i>	<i>Contact Office and Telephone No.</i>
	PAG079902	Wheelabrator Hagerstown 1030 Frederick Street Hagerstown, MD 21740	BWQP (717) 787-8184

*General Permit Type—PAG 8**Facility Location  
County and  
Municipality**Permit No.**Applicant Name  
and Address**Receiving Stream  
or Body of Water**Contact Office and  
Telephone No.*Manor Township  
Lancaster County

PAG-08-3533

Millersville Borough WWTP  
10 Colonial Avenue  
Millersville, PA 17551

N/A

Lancaster County CD  
1383 Arcadia Road  
Room 6  
Lancaster, PA 17601  
(717) 299-5361Union Township  
Lebanon County

PAG-08-3531

Northern Lebanon County  
Auth.  
P. O. Box 434  
Jonestown, PA 17038

N/A

Lebanon County CD  
2120 Cornwall Rd.,  
Suite 5  
Lebanon, PA 17042  
(717) 272-3908, Ext. 3*General Permit Type—PAG 9**Facility Location  
County and  
Municipality**Permit No.**Applicant Name  
and Address**Receiving Stream  
or Body of Water**Contact Office and  
Telephone No.*Monroe Township  
Cumberland County

PAG-09-3520

Williams Grove Amusement  
Park and Speedway  
One Park Avenue  
Mechanicsburg, PA 17055

N/A

Cumberland County CD  
43 Brookwood Avenue,  
Suite 4  
Carlisle, PA 17013  
(717) 240-7812**SEWAGE FACILITIES ACT  
PLAN APPROVAL****Plan approvals granted under the Pennsylvania  
Sewage Facilities Act (35 P. S. §§ 750.1—750.20).***Regional Office: Water Management Program Manager,  
Southcentral Region, 909 Elmerton Ave., Harrisburg, PA  
17110.*

**Liverpool Borough, Perry County, P. O. Box M,  
Liverpool, PA 17405.** The approved plan provided for  
expansion and upgrade of an existing sewage treatment  
plant to .150 mgd capacity. The upgrade will be to  
sequencing batch reactor technology. Following expansion  
of the STP, public sewers will be extended to the South  
Market Street area of the Borough. The Department's  
review of the sewage facilities update revision has not  
identified any significant environmental impacts resulting  
from this proposal. Any required NPDES permits or  
WQM permits must be obtained in the name of the  
municipality or authority as appropriate.

**Elizabeth Township, Lancaster County, 423 South  
View Dr., Lititz, PA 17543.** The approval plan amend-  
ment provides for a de-nitrification unit maintenance  
ordinance that will apply to all de-nitrification technology  
in the municipality. The Department's review of the  
sewage facilities update revision has not identified any  
significant environmental impacts resulting from this  
proposal.

**Penn Township, Lancaster County, 97 North  
Penryn Rd., Manheim, PA 17545.** The approved plan  
amendment provides for a de-nitrification unit mainte-  
nance ordinance that will apply to all de-nitrification  
technology in the municipality. The Department's review  
of the sewage facilities update revision has not identified  
any significant environmental impacts resulting from this  
proposal.

*Northwest Regional Office: Regional Water Management  
Program Manager, 230 Chestnut Street, Meadville, PA  
16335-3481, (814) 332-6942.*

**West Salem Township, Mercer County, West Salem  
Township Board of Supervisors, 610 Vernon Road,  
Greenville, PA 16125.** This approved project proposes  
construction of a new collection and conveyance system.  
Treatment will be provided by the Greenville Sanitary  
Authority Wastewater Treatment Plant.

The Department's review of the sewage facilities update  
revision has not identified any significant environmental  
impacts resulting from this proposal.

**SAFE DRINKING WATER****Actions taken under the Pennsylvania Safe Drink-  
ing Water Act (35 P. S. §§ 721.1—721.17).***Southeast Regional Office: Sanitarian Regional Man-  
ager, Lee Park, Suite 6010, 555 North Lane,  
Conshohocken, PA 19428-2233, (610) 832-6130.*

**Permit No. 1599504.** Public water supply. **Borough of  
Oxford, P. O. Box 380, Oxford, PA 19363-0380.** A permit  
has been issued for the construction of an air stripper  
tower to remove tetrachloroethylene from Wells No. 7 and  
No. 8 in the Borough of Oxford, **Chester County.**

*Type of Facility: Public Water Supply System**Consulting Engineer: Spotts, Stevens and McCoy, Inc.,  
345 N. Wyomissing Boulevard, Reading, PA 19610-0307**Permit to Construct Issued: April 9, 1999**Northeast Regional Office: Sanitarian Regional Man-  
ager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (717)  
826-2511.*

**Permit No. 4596508.** Public water supply. **Pennsylva-  
nia American Water Company, 800 West Hersheypark  
Drive, Hershey, PA 17033.** This proposal involves the  
construction of PWS facilities to treat water from Well  
No. 1, previously developed by Coolbaugh Township and  
connecting it to customers previously served by the  
Tobyhanna Water Company, Fairview Water Company  
National Utilities, Inc., at Pine Hill and Summit Point. It  
is located in Coolbaugh Township, **Monroe County.**  
Construction permit issued on March 16, 1999.

**Permit No. 1398503.** Public water supply. **Beaver Run Water Assoc. (a.k.a. Holiday Pocono subdivision).** Diane Harbin, Sec., P. O. Box 265, Albrightsville, PA 18210. This proposal involves the construction of two wells with control buildings, pH/alkalinity adjustment, disinfection, finished water storage and distribution piping. It is located in Kidder Township, **Carbon County**. Construction permit issued on April 6, 1999.

**Permit No. 6498501.** Public water supply. **Fox Ledge, Inc.,** Al Alessi, President, P. O. Box 89, Mt. Pleasant, PA 18453. This proposal involves the addition of a 40,000 gallon storage tank, cartridge filter, UV—disinfection and bottling line. It is located in Mount Pleasant Township, **Wayne County**. Construction permit issued on March 31, 1999.

**Minor Amendment to Auburn Municipal Authority.** Public water supply. Eric Nagle, Chairperson, 135 Orchard Street, Auburn, PA 17922. This proposal involves modification to the water treatment plant. It is located in the Borough of Auburn, **Schuylkill County**. Construction permit issued on April 1, 1999.

**Operations Permit** issued on February 8, 1999, to **PAWC—Hickory System,** Delaware Township, **Pike County**.

**Operations Permit** issued on March 22, 1999, to **Upper Saucon Township,** Upper Saucon Township, **Lehigh County**.

**Operations Permit** issued on March 12, 1999, to **Hi-View Terrace Mobile Home Park,** Jefferson Township, **Lackawanna County**.

*Southcentral Regional Office: Sanitarian Regional Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4708.*

**Permit No. 7220949.** Public water supply. **Analytical Laboratory Services, Inc.,** Lower Swatara Township, **Dauphin County.** *Responsible Official:* Raymond J. Martrano, Laboratory Manager, 34 Dogwood Lane, Middletown, PA 17057. *Type of Facility:* Installation lead and copper corrosion control utilizing orthophosphate, and the use of UV lights for disinfection. *Permit to Operate Issued:* April 7, 1999.

**Permit No. 2298503.** Public water supply. **Elizabethville Area Authority,** Washington Township, **Dauphin County.** *Responsible Official:* Andrew W. Hills, Chairperson, P. O. Box 271, Elizabethville, PA 17023. *Type of Facility:* Installation of Well No. 5 as a new source of supply. *Consulting Engineer:* Kent P. Bachmann, Glace Associates, Inc. *Permit to Operate Issued:* April 5, 1999.

**Permit No. 3060059.** Public water supply. **Reading Area Water Authority,** City of Reading, **Berks County.** *Responsible Official:* Anthony Consentino. *Type of Facility:* Sludge handling facilities at the Maiden Creek Filtration Plant. *Consulting Engineer:* Entect Engineering, Inc., Danial Castillani, P. E. *Permit to Operate Issued:* March 16, 1999.

*Regional Office: Northcentral Field Operations, Environmental Program Manager, 208 West Third Street, Suite 101, Williamsport, PA 17701.*

**Permit No. MA.** The Department issued a construction permit to **Quehanna-Covington-Karthus Area Authority,** P. O. Box 104, Frenchville, PA 16836-0104, Karthus Township, **Clearfield County**. The permit was issued for construction/installation of a Hammonds tablet chlorinator to provide disinfection treatment of the water from Well No. 2.

*Northwest Regional Office: Regional Manager, 230 Chestnut Street, Meadville, PA (814) 332-6899.*

**Permit No. 2599502.** Public water supply. **Greene Township,** 9333 Tate Road, Erie, PA 16509, has been issued a permit for Aqua Mag treatment in Horseshoe Subdivision in Greene Township, **Erie County**.

*Type of Facility:* Community Water Supply

*Consulting Engineer:* Mark Corey, P.E., Mark Corey & Associates, 5845 Jordan Road, Erie, PA 16510

*Permit to Construct Issued:* April 13, 1999

## HAZARDOUS SITES CLEANUP

Under the Act of October 18, 1988

### Settlement Under the Hazardous Sites Cleanup Act

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.101—6020.1305) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C.A. §§ 9601—9675), has entered into a proposed settlement relating to the cleanup of the Herald Products HSCA Site in Pennel Borough, PA. The proposed settlement involves a Consent Decree in the Court of Common Pleas of Bucks County, between the Department and Edward Shults, who is a potentially responsible party as the owner of the Site during a release of hazardous substances at the Site.

Contamination identified by the Department at the Site included xylene, ethylbenzene and other alkybenzenes. The remedial action conducted by the Department was completed in December of 1994, and included in situ soil-vapor extraction. Under the terms of the proposed Consent Decree, Edward Shults will reimburse a portion of the costs incurred by the Department in connection with the Site.

This notice is provided under section 1113 of HSCA (35 P. S. § 6020.1113). The Department will provide for a 60-day public comment period on the proposed Consent Decree from the date of publication of this notice. The proposed Consent Decree may be examined from 8 a.m. to 4 p.m. at the Department's office at Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, by contacting Matthew Miller at (610) 832-5950 or Paul Rettinger at (610) 832-6300 during normal business hours. Persons may submit written comments to Matthew Miller at the previous address. The Department will provide a response to significant written comments received during the public comment period, and the proposed Consent Decree authorizes the Department to withhold or withdraw its consent in the event that the Department determines, based on comments received during the public comment period, that the Consent Decree is inappropriate, improper or not in the public interest.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

Under Act 2, 1995

Preamble 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908) and Chapter 250 Administration of the Land Recycling Program

Provisions of 25 Pa. Code § 250.8 Administration of Land Recycling Program requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the Land Recycling and Environmental Remediation Standards Act (act). Plans and reports required by provisions of the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of reuse of the property, and in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. A cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program Manager in the Department's Regional Office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the community relations coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has acted upon the following plans and reports:

*Southeast Regional Office: Environmental Cleanup Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428, (610) 832-5950.*

**Brandywine Realty II, Concord Township, Delaware County.** Carl Bones, Pennoni Associates, Inc., One Drexel Plaza, 3001 Market Street, Philadelphia, PA 19104, has submitted a Final Report concerning remediation of site groundwater contaminated with solvents. The Final Report demonstrated attainment of background standards and was approved by the Department on March 20, 1999.

*Southcentral Regional Office: Environmental Cleanup Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4705.*

**Berks Products Corporation, Muhlenberg Township, Berks County.** Berks Products Corporation, P. O. Box 421, Reading, PA has submitted a final report concerning the remediation of site soils and groundwater contaminated with solvents, BTEX, PHCs and PAHs. The final report demonstrated attainment of the Statewide health standard, and was approved by the Department on April 15, 1999.

*Southwest Field Office: John J. Matviya, Environmental Cleanup Program Manager; 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-5217.*

**Cecilia Kearns Residence, East Conemaugh Borough, Cambria County.** Cecilia Kearns Residence, 114 Third Street, East Conemaugh, PA 15909 and David R. Crowther, Hydrocon Services, Inc., 2945 South Pike Avenue, Allentown, PA 18103, have submitted a final report concerning remediation of site soil contaminated with BTEX and PAHs. The final report demonstrated attainment of the Statewide health standard and was approved by the Department on April 9, 1999.

## SOLID AND HAZARDOUS WASTE

### LICENSE TO TRANSPORT HAZARDOUS WASTE

#### Licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.

*Bureau of Land Recycling and Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**Douglas Brothers, Inc.,** R. R. 1, Box 42, Athens, PA 18810; License No. **PA-AH 0617**; license issued April 13, 1999.

**EQ Industrial Services, Inc.,** 3650 Carpenter Road, Ypsilanti, MI 48197; License No. **PA-AH 0615**; license issued March 9, 1999.

**North American Environmental Services, Inc.,** 1240 Saratoga Road, Ballston Spa, NY 12020; License No. **PA-AH 0616**; license issued March 31, 1999.

#### Renewal licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.

*Bureau of Land Recycling and Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**Adcom Express, Inc.,** 17650 Duvan Drive, Tinley Park, IL 60477; License No. **PA-AH S158**; renewal license issued March 9, 1999.

**Beelman Truck Co.,** P. O. Box 305, St. Libory, IL 62282; License No. **PA-AH 0363**; renewal license issued April 16, 1999.

**Central States Environmental Services,** 609 Airport Road, Centralia, IL 62801; License No. **PA-AH S186**; renewal license issued April 8, 1999.

**Envirco Transportation Inc.,** 61½ Railroad Street, Canfield, OH 44406; License No. **PA-AH 0361**; renewal license issued April 7, 1999.

**Fenn-Vac, Inc.,** P. O. Box 62679, North Charleston, SC 29419; License No. **PA-AH 0542**; renewal license issued March 26, 1999.

**Franklin Environmental Services, Inc.,** 185 Industrial Road, Wrentham, MA 02093-0617; License No. **PA-AH 0224**; renewal license issued March 31, 1999.

**Hafer Environmental Services, Inc.,** P. O. Box 4418, Reading, PA 19606; License No. **PA-AH 0360**; renewal license issued March 10, 1999.

**Joseph Moving and Storage Co.,** P. O. Box 5, Woodland, PA 16881; License No. **PA-AH 0390**; renewal license issued March 12, 1999.

**Keystone Environmental Services, Inc.,** 1100 South Pottsville Pike, Shoemakersville, PA 19555; License No. **PA-AH 0236**; renewal license issued March 11, 1999.

**LWD Trucking, Inc.**, P. O. Box 327, Calvert City, KY 42029; License No. **PA-AH 0569**; renewal license issued April 2, 1999.

**M. C. Tank Transport, Inc.**, 10134 Mosteller Lane, West Chester, OH 45069; License No. **PA-AH 0489**; renewal license issued March 4, 1999.

**Med-Trac, Inc.**, 715 William Pitt Way, Pittsburgh, PA 15238; License No. **PA-AH 0561**; renewal license issued March 4, 1999.

**Pennzoil-Quaker State Company**, 2 Main Street, Rouseville, PA 16344; License No. **PA-AH 0484**; renewal license issued March 31, 1999.

**Petroclean, Inc.**, P. O. Box 92, Carnegie, PA 15106; License No. **PA-AH 0109**; renewal license issued March 31, 1999.

**Reifsneider Transportation, Inc.**, 223 Fellowship Road, Eagle, PA 19480; License No. **PA-AH 0486**; renewal license issued April 2, 1999.

**Republic Environmental Systems**, 21 Church Road, Hatfield, PA 19440; License No. **PA-AH 0317**; renewal license issued April 8, 1999.

**Sani Mobile Environment Inc.**, 2630 Industrial Boulevard, Chambly, PQ J3L 4V2; License No. **PA-AH 0335**; renewal license issued April 8, 1999.

**Wade Salvage Inc., t/a Wade Environment**, 382 Jackson Road, Atco, NJ 08004; License No. **PA-AH S246**; renewal license issued March 4, 1999.

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**Licenses expired under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations for license to transport hazardous waste.**

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*Bureau of Land Recycling and Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**Atlantic Recovery Services, Inc.**, 8 Tree Lane, Levittown, PA 19054; License No. **PA-AH 0559**; license expired on March 31, 1999.

**C&W Environmental Services, Inc.**, 317 Enterprise Street, Ocoee, FL 34761; License No. **PA-AH 0557**; license expired on March 31, 1999.

**Steel City Environmental Services, Inc.**, 210 Washington Avenue, Dravosburg, PA 15034; License No. **PA-AH 0389**; license expired on March 31, 1999.

**Tri-State Waste Disposal Co., Inc.**, 72 Lawrence Road, Lafayette, NJ 07848; License No. **PA-AH S209**; license expired on February 28, 1999.

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**Hazardous waste transporter licenses voluntarily terminated under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport hazardous waste.**

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*Bureau of Land Recycling and Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**M&M Chemical & Equipment Co., Inc.**, 1229 Valley Drive, Attalla, AL 35954; License No. **PA-AH 0163**; license terminated April 7, 1999.

**Oldover Corporation**, P. O. Box 228, Ashland, VA 23005; License No. **PA-AH 0125**; license terminated April 7, 1999.

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**PREVIOUSLY UNPERMITTED CLASS OF SPECIAL HANDLING WASTE**

**INFECTIOUS OR CHEMOTHERAPEUTIC WASTE**

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**Renewal licenses issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.**

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*Bureau of Land Recycling and Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**NSH Network, Inc., DBA Resource Management Council Services**, 888 Veteran Memorial Highway, Suite 100, Hauppauge, NY 11788; License No. **PA-HC 0197**; renewal license issued April 6, 1999.

**S-J Transportation, Co.**, P. O. Box 169, Woodstown, NJ 08098; License No. **PA-AH0559**; renewal license issued April 7, 1999.

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**License expired under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.**

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*Bureau of Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**Safety Medical Systems, Inc.**, 43 Hercules Drive, Colchester, VT 05446; License No. **PA-HC 0189**; license expired April 6, 1999.

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**Infectious and chemotherapeutic waste transporter license voluntarily terminated under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and the Infectious and Chemotherapeutic Waste Law (35 P. S. §§ 6019.1—6019.6) and regulations for license to transport infectious and chemotherapeutic waste.**

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*Bureau of Land Recycling and Waste Management: Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

**Medical Express & General Courier Service, Inc.**, 1078 Banksville Road, Pittsburgh, PA 15216; License No. **PA-HC 0056**; license terminated February 15, 1999.

## AIR QUALITY

### OPERATING PERMITS

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**General Plan Approval and Operating Permit issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

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*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.*

**GP1-12-01: Emporium Hardwoods, Inc.** (HC3, Box 1, Emporium, PA 15834), on March 3, 1999, to construct and operate a 21 million BTU/hour natural gas-fired boiler equipped with a low NOx burner under the General Plan Approval and General Operating Permit for gas and

no. 2 oil-fired combustion units (BAQ-GPA/GP-1) in Emporium Borough, **Cameron County**.

**GP5-17-07A: Somerset Oil and Gas Co., LLC** (2039 South Sixth Street, Indiana, PA 15701), on April 13, 1999, to construct and operate a 186 horsepower natural gas-fired engine under the General Plan Approval and General Operating Permit for natural gas production facilities (BAQ-GPA/GP-5) at the South Station in Brady Township, **Clearfield County**.

**Operating Permits Minor Modification issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.*

**49-304-004A: Somerset Consolidated Industries, Inc., Watsonstown Foundry Division** (P. O. Box 126, Watsonstown, PA 17777), on February 18, 1999, to remove a restriction on ductile iron production and require all ductile iron to be produced with a tundish ladle in Watsonstown Borough, **Northumberland County**.

**14-310-011B: Hanson Aggregates East** (P. O. Box 513, Jamesville, NY 13078), on April 15, 1999, for operation of a coarse material washer and associated conveyor in a stone crushing plant and to correct erroneous equipment identification at the Curtin Gap Quarry in Marion Township, **Centre County**.

**Operating Permits issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.*

**NMOP-59-00009: Mansfield University** (Mansfield, PA 16933), issued April 19, 1999, for boilers, heaters and emergency generators in Mansfield Borough, **Tioga County**.

*City of Philadelphia: Air Management Services, 321 University Avenue, Philadelphia, PA 19104, (215) 823-7584.*

**V95-020: Allied Tube & Conduit Corp.** (11350 Norcom Road, Philadelphia, PA 19154), Title V issued April 16, 1999, for operation of a tube and conduit manufacturing facility in **Philadelphia County**.

**V95-028: The Budd Co.** (2450 Hunting Park Avenue, Philadelphia, PA 19129), Title V issued April 16, 1999, for operation of two <100 MMBTU/hr boilers in **Philadelphia County**.

**V95-080: Mercy Hospital of Philadelphia** (501 South 54th Street, Philadelphia, PA 19143), Title V issued April 16, 1999, for operation of three 11.7 MMBTU/hr boilers in **Philadelphia County**.

**V97-011: Regal Corrugated Box Co.** (Adams Avenue and Ashland Street, Philadelphia, PA 19124), Title V issued April 16, 1999, for operation of a corrugated box manufacturing facility which includes two ≤500 HP boilers in **Philadelphia County**.

## PLAN APPROVALS

**Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**22-210-005D: Pennsy Supply, Inc.** (P. O. Box 3331, Harrisburg, PA 17105), issued April 7, 1999, for installation of a stone crushing plant controlled by two fabric filters and a wet suppression system in South Hanover Township, **Dauphin County**. This source is subject to 40 CFR 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants.

**22-210-010D: Pennsy Supply, Inc.** (P. O. Box 3331, Harrisburg, PA 17105), issued April 7, 1999, for modification of the stone crushing plant in Lower Swatara Township, **Dauphin County**. This source is subject to 40 CFR 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants.

*Northwest Regional Office: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6940.*

**PA-42-111B: Ethan Allen Mfg. Corp., Eldred Division** (Route 1, Eldred, PA 16731), issued April 8, 1999, for operation of a paint booth in Eldred, **McKean County**.

**PA-33-002A: Owens-Brockway Glass Container, Inc.** (Route 219 North, Brockway, PA 15824), issued April 9, 1999, for modifications to glass melting furnace A in Snyder Township, **Jefferson County**.

**62-312-014A: United Refining Co.** (15 Bradley Street, Warren, PA 16365), issued April 12, 1999, for installation of a vapor combustion unit in Warren, **Warren County**.

**Plan Approvals extensions issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Southcentral Regional Office: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4702.*

**06-1023: Maier's Bakery** (640 Park Avenue, Reading, PA 19611), issued February 11, 1999, to authorize temporary operation for the bread bakery catalytic oxidizer, covered under this Plan Approval until June 10, 1999, in Reading, **Berks County**.

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.*

**PA-61-185A: Heath Oil Co.** (P. O. Box 1128, Oil City, PA 16301), issued April 30, 1999, for two portable oil refineries in Barkeyville, **Venango County**.

**Minor Modification of Plan Approvals issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

*Northcentral Regional Office: Air Quality Program, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3637.*

**08-316-013A: Masonite Corp., Subsidiary of International Paper** (P. O. Box 311, Towanda, PA 18848), on April 8, 1999, to extend the deadline for the performance of stack testing on a hardboard press (Line II press) an additional 60 days in Wysox Township, **Bradford County**.

## MINING

### APPROVALS TO CONDUCT COAL AND NONCOAL ACTIVITIES

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P.S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. §§ 3301—3326); The Clean Streams Law (35 P.S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P.S. §§ 30.51—30.66); The Bituminous Mine Subsidence and Land Conservation Act (52 P.S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 water quality certification. Mining activity permits issued in response to the applications will also address the applicable permitting requirements of the following statutes: the Air Quality Control Act (35 P.S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

*Ebensburg District Office, 437 South Center Street, P. O. Box 625, Ebensburg, PA 15931-0625.*

#### Coal Permits Issued

**11830108.** Permit Renewal for Reclamation, only, **L & J Energy Company, Inc.** (P. O. Box I, Grampian, PA 16838), for continued restoration of a bituminous strip-auger mine in Susquehanna Township, **Cambria County**, affecting 183.4 acres, receiving stream unnamed tributary of West Branch Susquehanna River to West Branch Susquehanna River. Application received April 2, 1999; issued April 8, 1999.

**32880108.** Permit Renewal, **M. B. Energy, Inc.** (250 Airport Road, P. O. Box 1319, Indiana, PA 15701-1319), commencement, operation and restoration of bituminous strip mine in Brushvalley Township, **Indiana County**, affecting 133.2 acres, receiving stream unnamed tributary to Brush Creek; unnamed tributary to Yellow Creek. Application received February 19, 1999; issued April 15, 1999.

*Greensburg District Office, R. R. 2, Box 603-C, Greensburg, PA 15601.*

**30880104R. Patriot Mining Co., Inc.** (Route 12, Box 245, Morgantown, WV 26505). Renewal issued for continued operation and reclamation of a bituminous surface mine located in Greene Township, **Greene County**, affecting 67.2 acres. Receiving streams: unnamed tributary to Whitely Creek to the Monongahela River. Application received: October 9, 1998. Renewal issued: April 15, 1999.

*Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.*

**17980110. Junior Coal Contracting, Inc.** (R. R. 3, Box 225A, Philipsburg, PA 16866), commencement, operation and restoration of a bituminous surface mine permit in Decatur Township, **Clearfield County**, affecting 73.6 acres. Receiving streams: Albert Run to Little Laurel Run to Laurel Run to Moshannon Creek to the West Branch of the Susquehanna River. Application received May 8, 1998. Permit issued April 13, 1999.

*Knox District Office, P. O. Box 669, Knox, PA 16232.*

**16830114. C & K Coal Company** (P. O. Box 69, Clarion, PA 16214). Renewal of an existing bituminous strip, tipple refuse disposal and coal ash placement operation in Toby Township, **Clarion County** affecting 704.0 acres. This renewal is issued for reclamation only. Receiving streams: Six unnamed tributaries to Cherry Run. Application received: February 5, 1999. Permit Issued: April 8, 1999.

**43840105. Amerikohl Mining, Inc.** (202 Sunset Drive, Butler, PA 16001). Renewal of an existing bituminous strip, auger and tipple refuse disposal operation in Pine and Mercer Townships, **Mercer and Butler Counties**. This renewal is issued for reclamation only. Receiving streams: Unnamed tributary to Swamp Run. Application received: February 24, 1999. Permit Issued: April 8, 1999.

**33930113. R & L Coal Corp.** (P. O. Box 26, Punxsutawney, PA 15767). Renewal of an existing bituminous strip operation in Pine Creek Township, **Jefferson County** affecting 23.9 acres. This renewal is issued for reclamation only. Receiving streams: Cable Run and unnamed tributaries to Cable Run. Application received: March 5, 1999. Permit Issued: April 8, 1999.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**54970105. Anthraco, Ltd.** (Box 266, Gilberton, PA 17934), commencement, operation and restoration of an anthracite surface mine operation in Mahanoy Township, **Schuylkill County** affecting 1,039.8 acres, receiving stream—none.

*Hawk Run District Office, P. O. Box 209, Off Empire Road, Hawk Run, PA 16840.*

#### Small Noncoal (Industrial Mineral) Permits Issued

**08980817. Charles E. Johnson** (R. R. 1, Box 250-A, Towanda, PA 18848), commencement, operation and restoration of a small industrial minerals (bluestone) permit in Pike Township, **Bradford County** affecting 1 acre. Receiving streams: William Creek, tributary to Gaylord Creek. Application received January 12, 1999. Permit issued April 13, 1999.

*Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901-2454.*

**58980818. John D. Lepre** (R. R. 1, Box 310, Kingsley, PA 18826), commencement, operation and restoration of a bluestone quarry operation in Harford Township, **Susquehanna County** affecting 3.0 acres, receiving stream—none. Permit issued April 15, 1999.

### ABANDONED MINE RECLAMATION

*Bureau of Abandoned Mine Reclamation, P. O. Box 8476, Harrisburg, PA 17105-8476*

*Bond Forfeiture Contract Awarded: BF 382-101.1* Manor Township, **Armstrong County**. AMLR Project, William J. McIntyre Coal Company, Inc., Manor Township, Armstrong County. *Contractor: J&J Snyder, Inc. Amount: \$140,424.40. Date of Award: February 17, 1999.*

*Bond Forfeiture Contract Awarded: BF 402-101.1.* Nicholson Township, **Fayette County**. AMLR, Genovese Coal Company, Nicholson Township, Fayette County. *Contractor: Earthmovers Unlimited, Inc. Amount: \$648,843. Date of Award: February 17, 1999.*

*Bond Forfeiture Contract Awarded: BF 421-101.1.* Murrysville Borough and Washington Township, **Westmoreland County**. AMLR, Frank Kowalski, Murrysville

Borough and Washington Township, Westmoreland County. *Contractor: Hutchison Excavating. Amount: \$84,358. Date of Award: February 9, 1999.*

**ACTIONS TAKEN UNDER SECTION 401: FEDERAL WATER POLLUTION CONTROL ACT ENCROACHMENTS**

The Department of Environmental Protection (Department) has taken the following actions on previously received Dam Safety and Encroachment permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

Persons aggrieved by this action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) to the Environmental Hearing Board, 400 Market Street, Floor 2, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of the written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

**Actions on applications filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and sections 5 and 402 of The Clean Streams Law (35 P.S. §§ 691.5 and 691.402) and notice of final action for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).** (Note: Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.)

*Southcentral Regional Office: Section Chief, Water Management Program, Soils and Waterways Section, 909 Elmerton Avenue, 2nd Floor, Harrisburg, PA 17110, (717) 705-4707.*

**E05-216-R-A1.** Encroachment. **Monroe Township**, P. O. Box 38, Clearville, PA 15535. To amend Permit No. E05-216-R to construct and maintain a 6-foot diameter corrugated metal pipe (CMP) culvert in the channel of an unnamed tributary to Elk Lick Creek on T-352 located about 0.4 mile from its intersection with T-351 (Clearville, PA Quadrangle N: 3.5 inches; W: 11.05 inches) in Monroe Township, **Bedford County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E05-272.** Encroachment. **New Enterprise Stone & Lime Co.**, P. O. Box 77, New Enterprise, PA 16664. To remove the existing building and to construct and maintain piers to support a 24-foot by 60-foot office within the right bank's 100-year floodway of Three Springs Run located just upstream of Church Street Bridge (SR 1015) in New Enterprise Village (New Enterprise, PA Quadrangle N: 8.15 inches; W: 4.7 inches) in South Woodbury Township, **Bedford County**. This permit was issued under section 105.13(e) "Small Projects."

**E06-434-R.** Encroachment. **MIRO, Inc.**, P. O. Box 180, Swarthmore, PA 19081. Reissuance of E06-434 to place fill in 0.225 acre of wetlands for roadways in the Antietam Creek Valley Subdivision located west of Gibraltar Road (TR 434) approximately 2,200 feet north of SR 422 (Birdsboro, PA Quadrangle N: 11.3 inches; W: 14.5 inches) in Exeter Township, **Berks County**. The permittee is required to provide 0.303 acre of replacement wetlands. This permit also includes 401 Water Quality Certification.

**E06-521.** Encroachment. **PA Department of Transportation**, Engineering District 5-0, 1713 Lehigh Street, Allentown, PA 18103. To impact 0.78 acre of wetlands during the reconstruction of Route 78 and to rehabilitate and maintain two existing bridges across Crosskill Creek and a tributary to Crosskill Creek at points at Route 78 (Bethel, PA Quadrangle N: 15.4 inches; W: 15.9 inches and N: 16.4 inches; W: 13.0 inches) in Bethel Township, **Berks County**. The permittee is required to provide a minimum of 0.78 acre of replacement wetlands. This permit also includes 401 Water Quality Certification.

**E07-306.** Encroachment. **Sheetz, Incorporated**, Wehwood Store, 5700 6th Ave., Altoona, PA 16602. To construct and maintain a 68" × 106", 203 foot long, elliptical reinforced concrete pipe stream enclosure addition to an existing stream enclosure in an unnamed tributary to Spring Run (WWF) for the purpose of developing a commercial property located on the northeast corner of the intersection of 25th Avenue and Juniata Gap Road (SR 4017) (Altoona, PA Quadrangle N: 6.23 inches; W: 3.75 inches) in Altoona City, **Blair County**. This permit also includes 401 Water Quality Certification.

**E22-397.** Encroachment. **Shaffer-Gelder Development Co.**, Fred Shaffer, 1345 E. Chocolate Ave., Hershey, PA 17033. To relocate approximately 800 feet of the channel of a tributary to Swatara Creek (WWF) at a point along Stoverdale Road (Middletown, PA Quadrangle N: 22.0 inches; W: 12.4 inches) for the purpose of improving flow characteristics in Derry Township, **Dauphin County**. This permit also includes 401 Water Quality Certification.

**E31-150.** Encroachment. **Huntingdon County Commissioners**, 223 Penn Street, Huntingdon, PA 16652. To remove an existing bridge and to construct and maintain a single span prestressed concrete spread box beam bridge having a clear span of 54.79 feet and a minimum underclearance of about 9.74 feet across Three Springs Creek (CWF) located on Township Road T-341 at Station 2+56.36 and known as Watkins Bridge (County Bridge No. 6) (Orbisonia, PA Quadrangle N: 13.3 inches; W: 11.7 inches) in Clay Township, **Huntingdon County**. This permit also includes 401 Water Quality Certification.

**E36-666.** Encroachment. **Clarence Wenger**, 1011 Woodland Drive, Quarryville, PA 17566. To excavate an impoundment area within the floodway for construction of a storm water collection basin in and along a tributary to Puddle Duck Creek (HQ). The construction of an outfall endwall from a storm sewer into the tributary below Furniss Road is also authorized by this permit. The Furniss Hills Farm residential development is located along both sides of Furniss Road (SR 3005) and on the east side of Westbrook Road (T-462) (Wakefield, PA Quadrangle N: 5.5 inches; W: 8.5 inches) in Fulton Township, **Lancaster County**. Issuance of this permit constitutes approval of the Environmental Assessment for the non-jurisdictional storm water management embankment proposed at the project site. This permit was issued under



section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E67-561.** Encroachment. **Modern Trash Removal of York, Inc.**, 4400 Mountain Pisgah Road, York, PA 17402. To (1) relocate 2,300 linear feet of Tributary No. 5 to Kreutz Creek by constructing and maintaining 3,225 linear feet of replacement channel and associated habitat area to be located southwest of the intersection of Riddle Road and East Prospect Road, (2) line Tributary No. 5 with HDPE liner on the eastern side of the stream and R6 riprap on either bank and bottom of the stream for a distance of 320 linear feet just upstream of Riddle Road, (3) construct and maintain a triple 5 foot by 5 foot box culvert approximately 2,100 feet south of SR 0124 to convey the relocated Tributary No. 5 beneath Riddle Road. Just below the triple box culvert, a 2,868 foot long meandering stream will be constructed consisting of a series of riffles and pools, (4) place 400 square feet of R6 riprap within Kreutz Creek at the new confluence of Tributary No. 5, (5) place 80 square feet of riprap in an unnamed tributary to Kreutz Creek at a point located southeast of the intersection of SR 1024 and East Prospect Road to construct the Pond H outfall, and (6) encroach on 0.2 acre of wetlands by creation of the new Tributary No. 5 (Red Lion, PA Quadrangle N: 15.5 inches; W: 14.0 inches) in Windsor and Lower Windsor Townships, **York County**. The permittee agrees to construct 0.73 acre of wetlands in a habitat area located southwest of the new confluence of Tributary No. 5 and Kreutz Creek. This permit also includes 401 Water Quality Certification.

**E67-632.** Encroachment. **Rick Paules**, 6042 River Drive, York, PA 17406. To maintain previously placed fill measuring 200 feet long by 60 feet wide by 3 feet deep (average depth near floodway fringe) and to place additional fill 105 feet × 20 feet for access ramp in the floodway of the Susquehanna River located on North River Drive approximately 1 mile north of the Accomac Inn (Columbia West, PA Quadrangle N: 8.5 inches; W: 11.5 inches) in Hellam Township, **York County**. This permit also includes 401 Water Quality Certification.

*Northeast Regional Office, Soils and Waterways Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**E13-115.** Encroachment. **Pennsylvania Department of Transportation, District 5-0**, 1713 Lehigh Street, Allentown, PA 18103. To remove the existing structure and to construct and maintain a spread box beam bridge having a normal span of 75.1 feet with an underclearance of 18 feet across Aquashicola Creek to replace the existing structurally inadequate bridge. The project is located at the S. R. 0248 bridge over Aquashicola Creek (Palmerston, PA Quadrangle N: 7.8 inches; W: 15.5 inches) in Lower Towamensing Township, **Carbon County**.

**E40-512.** Encroachment. **City of Wilkes-Barre**, 40 East Market Street, Wilkes-Barre, PA 18711. To repair and maintain an existing retaining/flood wall along the left bank of Solomon Creek, with work consisting of the removal and replacement of a 105-linear-foot section of wall. The replaced section will be a reinforced concrete cantilever wall with concrete-formed simulated stone facing. The project includes a 6-inch PVC stormwater outfall along the new wall section. The project is located immediately upstream of the intersection of South Franklin Street and Brook Street (Wilkes-Barre West, PA Quadrangle N: 19.6 inches; W: 4.5 inches), in the City of Wilkes-Barre, **Luzerne County**.

**E45-364.** Encroachment. **Robert and Anja Smith**, P. O. Box 270, Spring House, PA 19477. To place fill in 0.10 acre of wetlands adjacent to Lake Naomi for the purpose of constructing a home located at Lot 25, Unit 5, Section 4 on the north side of Lakeview Drive, approximately 250 feet northwest of the intersection of Lakeview Drive and Hemlock Circle (Pocono Pines, PA Quadrangle N: 21.5 inches; W: 10.4 inches), in Tobyhanna Township, **Monroe County**. This project was previously authorized by Permit No. E45-129. The permittee provided for 0.10 acre of replacement wetlands by participating in the Pennsylvania Wetland Replacement Project.

**E54-238A.** Encroachment. **Lake Hauto Club**, 140 Maple Terrace, Nesquehoning, PA 18240-2128. To (1) restore and maintain two existing beaches in Lake Hauto, with work consisting of dredging accumulated sediment and placing approximately 4 inches of sand, at Eastwood Beach (approximately 110 feet × 50 feet) and Oakwood Beach (approximately 210 feet × 60 feet); (2) dredge approximately 50 cubic yards of accumulated sediment to restore boating access to three properties at the west end of the lake; (3) construct and maintain two docks, each extending 140 feet from the shoreline, near Eastwood Beach and Crescent Beach; and (4) construct and maintain four dry hydrant intake structures (three in Lake Hauto and one in a body of water known as Birch Pools, located approximately 1,500 feet north of Lake Hauto). The project is located along the northern shoreline of Lake Hauto, north of S. R. 0054 (Tamaqua, PA Quadrangle N: 16.5 inches; W: 6.0 inches), in Rush Township, **Schuylkill County** and Nesquehoning Borough, **Carbon County**. The work authorized herein constitutes an amendment to Permit No. E54-238, which was issued on November 7, 1997.

**E54-263.** Encroachment. **Blue Mountain School District**, P. O. Box 279, Red Dale Road, Orwigsburg, PA 17961-0279. To place fill in 0.11 acre of wetlands within the drainage basin of Mahonney Creek, for the purpose of constructing site improvements at Blue Mountain High School. The wetland impacts are associated with the construction of an athletic field, an outfall apron and berm for a stormwater detention pond, and the widening of an existing access road. The project is located on a 113-acre parcel of land situated on the northwest corner of the intersection of S. R. 0443 and T-376 (Greenview Road) (Pottsville, PA Quadrangle N: 4.7 inches; W: 1.7 inches), in North Manheim Township, **Schuylkill County**. The permittee is required to provide 0.19 acre of replacement wetlands.

*Southwest Regional Office, Soils & Waterways Section, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E04-232.** Encroachment. **County of Beaver**, Department of Engineering, 469 Constitution Boulevard, New Brighton, PA 15066-3105. To remove the existing bridge (County Bridge No. 31) and to construct and maintain a new bridge having a span of 24.0 feet with a minimum underclearance of 7.5 feet across the channel of North Fork of Kings Creek, and to realign the channel of said stream for a distance of approximately 58.0 feet upstream and 50.0 feet downstream from the bridge site. The bridge is located on Mack Hollow Road, approximately 60 feet east from the intersection of Mack Hollow Road and Sutherin Road (Weirton, WV-PA-Ohio Quadrangle N: 20.9 inches; W: 1.5 inches) in Hanover Township, **Beaver County**. This permit was issued under section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

Northwest Regional Office, Soils and Waterways Section, 230 Chestnut Street, Meadville, PA 16335-3481, (814) 332-6942.

**E16-107. Encroachment. Waterfront Boatworks, P. O. Box 472, East Brady, PA 16028.** To construct and maintain a 20-inch-diameter outfall pipe and associated fill and riprap outlet protection along the left bank of the Allegheny River at River Mile 69.1 as an extension of an existing stormwater outfall pipe and erosion protection at the Waterfront Boatworks facility along S. R. 0068 (East Brady, PA Quadrangle N: 20.3 inches; W: 16.3 inches) in East Brady Borough, **Clarion County**.

**E25-579. Encroachment. PA Department of Transportation, District 1-0, 1140 Liberty Street, Franklin, PA 16323.** To remove the existing bridge and to construct and maintain a prestressed concrete spread box beam bridge having a clear, normal span of 50 feet and an underclearance of 9 feet across East Branch LeBoeuf Creek on S. R. 1001, Segment 0140, Offset 2769 approximately 1 mile west of S. R. 1005 at Weeds Corners (Hammett, PA Quadrangle N: 6.8 inches; W: 9.3 inches) in Greene Township, **Erie County**.

**E62-341. Encroachment. Sheffield Township, 20 Leather Street, Sheffield, PA 16347.** To install and maintain a 6-inch-diameter dry fire hydrant water intake structure in and along the right bank of Fourmile Run on Four Mile Road approximately 0.5 mile east of S. R. 0006 (Sheffield, PA Quadrangle N: 18.5 inches; W: 6.2 inches) in Sheffield Township, **Warren County**.

### DAM SAFETY

**Actions on applications filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and sections 5 and 402 of The Clean Streams Law (35 P. S. §§ 691.5 and 691.402) and notice of final action for certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).**

#### Permits Issued and Actions on 401 Certification

Central Office: Bureau of Waterways Engineering, 400 Market Street, 3rd Floor, P. O. Box 8554, Harrisburg, PA 17105-8554, (717) 787-8568.

**D67-528. Dam. Modern Trash Removal of York, Inc. (R. R. 9, Box 317, York, PA 17402).** To construct, operate and maintain a sediment dam (Pond G) at Modern Landfill located in Lower Windsor and Windsor Townships, **York County**.

### SPECIAL NOTICES

#### Request for Proposal

Union County, Pennsylvania is currently revising its Municipal Solid Waste Management Plan in accordance with the requirements of the Municipal Waste Planning, Recycling, and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) (Act 101). The County of Union is issuing this Request for Proposal (RFP) in order to obtain information which will form the basis for selecting a qualified vendor(s) to provide long term disposal capacity for county generated municipal solid waste (MSW), to include construction and demolition waste (C/D) and sewage sludge generated within the County. This RFP is issued to meet the requirements of Act 101, which mandates the utilization of a fair and competitive procurement process.

For a non-refundable fee of \$100 a copy of the RFP may be obtained from the Union County Planning Department, 1610 Industrial Boulevard, Suite 100, Lewisburg, PA 17837 or by calling (570) 522-1370. Proposals must be enclosed in a sealed envelope, clearly labeled as the "Proposal for Municipal Solid Waste Disposal Capacity" and be received by the Union County Chief Clerk by 4:30 p.m. prevailing time on Friday, May 28, 1999. Sealed and clearly labeled Proposals shall be submitted to Diana L. Robinson, Chief Clerk, Union County Commissioners Office, Union County Courthouse, 103 South Second Street, Lewisburg, PA 17837.

The sealed proposal will be publicly opened on Tuesday, June 1, 1999 at 10 a.m. at the regularly scheduled meeting of the Union County Board of Commissioners.

[Pa.B. Doc. No. 99-711. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Availability of Guidance

Guidance Documents are on DEP's World Wide Web site (<http://www.dep.state.pa.us>) at the Public Participation Center. The "January 1999 Inventory" heading is the Governor's List of Nonregulatory Documents. The "Search the Inventory of Technical Guidance Documents" heading is a database of the Inventory. The "Final Documents" heading is the link to a menu of the various DEP bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to DEP's draft technical guidance documents.

DEP will continue to revise its documents, as necessary, throughout 1999.

#### Ordering Paper Copies of DEP Guidance

Persons can order a bound paper copy of the latest Inventory or an unbound paper copy of any of the final documents listed on the Inventory by calling DEP at (717) 783-8727.

In addition, bound copies of some of DEP's documents are available as DEP publications. Please check with the appropriate bureau for more information about the availability of a particular document as a publication.

#### Changes to Guidance Documents

Here is the current list of recent changes. Persons who have any questions or comments about a particular document should call the contact person whose name and phone number is listed with each document. Persons who have questions or comments in general should call Joe Sieber at (717) 783-8727.

#### Draft Guidance

DEP ID: 012-0800-001 Title: Pennsylvania Department of Environmental Protection Quality Management Plan. Description: This is the policy document for implementation of quality management in the Department. Comment Period Closes: May 30, 1999. Anticipated Effective Date: June 30, 1999. Contact: Floyd Kefford at (717) 705-2434, or questions and comments can be E-mailed to Kefford.Floyd@dep.state.pa.us.

#### Final Guidance—Minor Revision

DEP ID: 275-2101-003 Title: Air Quality Permit Exemptions Description: This document defines determinations made regarding permitting exemptions as provided in the

permitting regulations. Effective Date: April 10, 1999.  
Contact: Goutam Mookerjee at (717) 787-4325.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 99-712. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Special Notice of Meeting Date Change

The Nonpoint Source Liaison Workgroup meeting scheduled for May 5 has been changed to May 25, 1999. The meeting will be held at 10 a.m. in Room 105 of the Rachel Carson State Office Building. Contact: Fran Koch, Bureau of Watershed Conservation, P. O. Box 8555, Harrisburg, PA 17105-8555, at (717) 783-2289 or e-mail Koch.Frances@dep.state.pa.us.

JAMES M. SEIF,  
*Secretary*

[Pa.B. Doc. No. 99-713. Filed for public inspection April 30, 1999, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Application of Allied Services John Heinz Institute of Rehabilitation Medicine for Exception to 28 Pa. Code § 153.1(b)

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Allied Services John Heinz Institute of Rehabilitation Medicine, Wilkes Barre, PA has requested an exception to the requirements of 28 Pa. Code § 153.1(b), referencing the "Guidelines for Design and Construction of Hospital and Health Care Facilities," 1996-97 edition. The petitioner is requesting a waiver from the requirements for rehabilitation facilities under Chapter 10 of this publication, specifically, Section 10.15.C Patient Bathing Facilities, which requires at least one island-type bathtub be provided in each nursing unit. The petitioner indicates that the facility has two existing tub rooms, one on each floor of the nursing department, which have not been used since the building was opened in 1982. The facility is requesting an exception to remove one of the tub rooms, for conversion to office space.

The request is on file with the Department. Persons may receive a copy of the request for exception by requesting a copy from Division of Acute & Ambulatory Care, Room 530 Health & Welfare Building, Harrisburg, PA 17120, (717)783-8980, Fax (717)772-2163, e-mail address: LVIA@HEALTH.STATE.PA.US.

Those persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and/or provide comments to the Department

and require an auxiliary aide service or other accommodation to do so, should contact Director, Division of Acute & Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

GARY L. GURIAN,  
*Acting Secretary*

[Pa.B. Doc. No. 99-714. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Application of Moss Rehabilitation Hospital for Exception to 29 Pa. Code § 153.1(b)

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Moss Rehabilitation Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1(b) which require compliance with the standards contained in the following publication: Guidelines for Design and Construction of Hospital and Healthcare Facilities. Moss Rehabilitation Hospital specifically requests exemption from the following standards contained in this publication: 10.15(c) that requires at least one island type bathtub in each nursing unit in its proposed unit to be located in the Sacred Heart Hospital in Allentown.

The request is on file with the Department. Persons may receive a copy of the request for exception by requesting a copy from Division of Acute and Ambulatory Care, PA Department of Health, Room 532 Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax: (717) 772-2163, e-mail Address: LVIAHEALTH.STATE.PA.US.

Those persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

GARY L. GURIAN,  
*Acting Secretary*

[Pa.B. Doc. No. 99-715. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Application of St. Clair Hospital for Exception to 28 Pa. Code § 153.1(b)

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that St. Clair Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1(b) which require compliance with the standards contained in the following publication: Guidelines for Design and Con-

struction of Hospital and Healthcare Facilities. St. Clair Hospital specifically requests exemption from the following standards contained in this publication:

10.15.A1—An exception to room area as follows:

a. 2 Bedroom #5401/5402 and 2 Bedroom #5403/5404: 229 square feet in lieu of 250 square feet.

b. 2 Bedroom #5405/5406 and 2 Bedroom #5407/5408: 237 square feet in lieu of 250 square feet.

10.15.A5—An exception to not provide hand washing facilities in the four 2 bedrooms. Hand washing facilities are provided in the Patient Toilet Rooms.

10.15.B1, 10.15.B3 and 10.15.B5: An exception to permit sharing of the Nurse Station/Charting area, the Dictation area and the Satellite Nurse Station/Charting area with the TCC.

10.15.B2—An exception to permit sharing of the existing Conference/Coordinator/Nurse Office.

10.15.B4—An exception to not provide a hand washing fixture at the Nurse Station. Hand washing fixtures are located in the Medication Room, Nourishment Room and Corridors.

10.15.B6, 10.15.B7—An exception to permit sharing of the existing Staff Lockers/Lounge and Staff Toilet Room with the TCC.

10.15.B8—An exception to use an existing Exam Room on Nursing Unit #5E (see Key Plan on Drawing A-2 for location), which is on the same floor as the proposed IRU.

10.15.B9—An exception to permit sharing of the existing Clean Utility Room with the TCC.

10.15.B10—An exception to permit sharing of the existing Soiled Utility Room with the TCC.

10.15.B11—An exception to permit sharing of the existing Medication Room with the TCC.

10.15.B12—An exception to permit sharing of the existing Clean Linen Room with the TCC.

10.15.B13—An exception to permit sharing of the existing Nourishment Room and Ice Maker with the TCC.

10.15.B14—An exception to permit sharing of the existing Equipment Storage Room with the TCC.

10.15.B16—An exception to permit sharing of the existing Multipurpose (Dining/Recreation) Rooms with the TCC.

10.15.C—An exception to permit sharing of the existing Wheelchair Shower and the existing Tub/Wheelchair Toilet/Training Toilet/Hair washing Room with the TCC. The 10 IRU beds require 1.25 bathing fixtures (1 for 8 beds) and the 13 TCC beds require 0.87 bathing fixtures (1 for 15 beds). A total of 2 existing bathing fixtures will be shared.

10.15.E—An exception to not provide an Isolation Room as in integral part of the IRU. Patients requiring isolation will be placed in isolation Room in another nursing unit and not be admitted to the IRU.

The request is on file with the Department. Persons may receive a copy of the request for exception by requesting a copy from Division of Acute and Ambulatory Care, PA Department of Health, Room 532 Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, Fax: (717) 772-2163, e-mail address: LVIAHEALTH.STATE.PA.US.

Those persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed above.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

GARY L. GURIAN,  
*Acting Secretary*

[Pa.B. Doc. No. 99-716. Filed for public inspection April 30, 1999, 9:00 a.m.]

### **Application of St. Francis Hospital of New Castle for Exception to 28 Pa. Code § 107.25(b)(8)**

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) hereby gives notice that St. Francis Hospital of New Castle has requested an exception to the requirements of 28 Pa. Code § 107.25(b)(8). It requests that it be permitted to have medical staff executive committee meetings six times a year instead of at least ten times a year.

The request is on file with the Department. Persons may receive a copy of the request for exception by requesting a copy from Division of Acute and Ambulatory Care, PA Department of Health, Room 532 Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, Fax: (717) 772-2163, e-mail address: LVIAHEALTH.STATE.PA.US.

Those persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT: (717) 783-6514 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

GARY L. GURIAN,  
*Acting Secretary*

[Pa.B. Doc. No. 99-717. Filed for public inspection April 30, 1999, 9:00 a.m.]

### **Application of West Shore Endoscopy Center for Exception to 28 Pa. Code § 571.1**

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives

notice that West Shore Endoscopy Center has requested an exception to the requirements of 28 Pa. Code § 571.1, referencing the "Guidelines for Design and Construction of Hospital and Health Care Facilities," 1996-97 edition.

West Shore Endoscopy Center specifically requests exemption from the following standards contained in this publication:

Section 9.5.F2—The petitioner is requesting an exception for the minimum operating room size of 360 square feet for an expansion of an existing endoscopic practice, and requests that two new endoscopic procedure rooms be constructed at approximately 168 square feet in area.

Section 9.5.F5. D, E—The petitioner is requesting an exception to provide a decontamination room in place of the required soiled workroom and fluid waste disposal facilities.

Section 9.5.F5.F—The petitioner is requesting an exception for the anesthesia storage facilities, since the endoscopic procedures performed only requires conscious sedation of patients.

Section 9.5.H1.A—The petitioner is requesting an exception from the requirement to provide 8 foot wide corridors in the clinical areas, and proposes 6 foot wide corridors in these areas. The petitioner is also requesting an exception to provide 4 foot wide corridors in other areas of the expansion, instead of the 6 foot wide corridors required.

The exceptions are requested based upon the physician's experience in his present endoscopic procedure facility which has been in operation since 1993. During this period of operation, only four cases out of 12,775 required additional medical intervention.

The request is on file with the Department. Persons may receive a copy of the request for exception by requesting a copy from Division of Acute and Ambulatory Care, Room 530 Health and Welfare Building, Harrisburg, PA 17120, (717)783-8980, Fax (717)772-2163, e-mail address: LVIA@HEALTH.STATE.PA.US.

Those persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and/or provide comments to the Department and require an auxiliary aide service or other accommodation to do so, should contact Director, Division of Acute and Ambulatory Care at (717)783-8980, V/TT: (717)783-6514 for Speech and/or Hearing Impaired Persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

GARY L. GURIAN,  
*Acting Secretary*

[Pa.B. Doc. No. 99-718. Filed for public inspection April 30, 1999, 9:00 a.m.]

#### **Availability of Draft Maternal and Child Health Services Block Grant Application for Federal Fiscal Year 2000**

The Department of Health is making copies available of the draft Maternal and Child Health Services Block

Grant Application for Federal Fiscal Year 2000, under 42 U.S.C.A. § 705(a)(5)(F). This application is the Commonwealth's draft request to the United States Department of Health and Human Services for block grant funding for Maternal and Child Health services.

The draft Block Grant Application describing proposed services, program goals and objectives and activities can be obtained on the Department of Health's web site at <http://www.health.state.pa.us/php/> or by contacting the Department of Health, Bureau of Family Health, Room 733 Health and Welfare Building, P. O. Box 90, Harrisburg, PA 17108, (717) 787-7192. V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 [TT].

Written comments will be accepted and should be sent to the above address, and must be received no later than 4 p.m., Wednesday, June 9, 1999.

Persons with a disability who require an alternative format of the above-mentioned application or who desire to comment in alternative format (such as, large print, audio tape, Braille), should also contact the Bureau of Family Health at the above-referenced address or phone numbers.

GARY L. GURIAN,  
*Acting Secretary*

[Pa.B. Doc. No. 99-719. Filed for public inspection April 30, 1999, 9:00 a.m.]

#### **Availability of Federal Fiscal Year 2000 Draft Application for Funding for Abstinence Education and Related Services**

The Department of Health is making copies available of its draft Abstinence Based Education and Related Services Grant Application for Federal Fiscal Year 2000. This application is the Commonwealth's draft request to the United States Department of Health and Human Services for funds to operate an abstinence education and related services plan and program as set out in 42 U.S.C.A. § 705(a)(5)(F) and 710(c)(2).

The application describing proposed services, program goals and objectives and activities can be obtained on the Department of Health web site at <http://www.health.state.pa.us/php/> or by contacting the Department of Health, Division of Maternal and Child Health, Bureau of Family Health, 725 Health and Welfare Building, P. O. Box 90, Harrisburg, PA 17108, (717) 783-8451, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 [TT].

Written comments will be accepted and should be sent to the above address, and must be received no later than 4 p.m., Friday, June 21, 1999.

Persons with a disability who require an alternative format or who desire to comment in alternative format (such as, large print, audio tape, Braille), should also contact the Division of Maternal and Child Health at the address or telephone numbers listed.

GARY L. GURIAN,  
*Acting Secretary*

[Pa.B. Doc. No. 99-720. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Public Meeting of Governor's Council on Physical Fitness and Sports

The Department of Health intends to hold a public meeting of the Governor's Council on Physical Fitness and Sports. The meeting will be held on Friday, May 7, 1999, from 9:30 a.m. until 10:30 a.m. in Room 39, East Wing, Capitol Building, Harrisburg, PA.

Persons requiring additional information, and persons with a disability who desire to attend the meeting and require an auxiliary aide service or other accommodation to do so, should contact Emilie M. Tierney, Director, Bureau of Chronic Diseases and Injury Prevention, or Brian Wyant, Division of Chronic Disease Intervention, Room 933 Health and Welfare Building, P. O. Box 90, Harrisburg, PA 17108, (717) 787-6214, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 [TT].

This meeting is subject to cancellation without notice.

GARY L. GURIAN,  
*Acting Secretary*

[Pa.B. Doc. No. 99-721. Filed for public inspection April 30, 1999, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### Income and Resource Limits for Spouse Living in the Community When the Other Spouse is Institutionalized

The Department of Public Welfare (Department) increased the income and resource limits described at 55 Pa. Code §§ 181.452(c)(2)(iv), 178.124(a)(3)(i) and (ii) effective January 1, 1999, as required by 42 U.S.C.A. § 1396r-5.

The regulations at 55 Pa. Code §§ 181.452(c)(2)(iv), 178.124(a)(3)(i) and (ii) establish the basis for determining the Monthly Community Spouse Maintenance Need Amount and the maximum and standard Community Spouse Resource Standard for the Categorically Needy Nonmoney Payment Medical Assistance (NMP-MA) and Medically Needy Only Medical Assistance (MNO-MA) Programs. These standards are required to be published in the *Pennsylvania Bulletin* annually and are available to the public upon request at the county assistance offices.

Effective January 1, 1999, the amounts are:

Maximum Community Spouse Resource Standard	\$81,960
Standard Community Spouse Resource Standard	\$16,392
Maximum Monthly Community Spouse Maintenance Need Amount	\$ 2,049

FEATHER O. HOUSTON,  
*Secretary*

[Pa.B. Doc. No. 99-722. Filed for public inspection April 30, 1999, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Retention of Engineering Firms

**Mercer County**  
**Project Reference No. 08430AG2340**

The Department of Transportation will retain an engineering firm to provide preliminary engineering, environmental studies, final design and services during construction for S.R. 4006, Section B00 (Porter Road Bridge) in West Salem Township, and S.R. 4006, Section B01 (Quaker Bridge) in Hempfield Township, Mercer County. The total estimated construction cost of both projects is \$4.4 million.

This will be a six (6) part agreement: Part I, S.R. 4006, Section B01, preliminary engineering; Part II, S.R. 4006, Section B01, final design; Part III, S.R. 4006, Section B01, services during construction; Part IV, S.R. 4006, Section B00, preliminary engineering; Part V, S.R. 4006, Section B00, final design; Part VI, S.R. 4006, Section B00, services during construction.

The selected firm will be required to provide the following engineering and design services for S.R. 4006, Section B01 and S.R. 4006, Section B00: field surveys; environmental clearance; Step 9 field view; H&H report; erosion and sedimentation control plan; type, size, and location report; foundation report; PUC coordination, (S.R. 4006, Section B01 only); utility and right-of-way clearances; roadway and structure design; plans, specifications, and estimates.

Services during construction for both S.R. 4006, Section B01 and S.R. 4006, Section B00 will consist of shop drawing review, technical assistance during construction, and alternate design review.

Letters of interest will be evaluated at the Engineering District 1-0 Office with emphasis on the following factors:

- Proven ability to meet project schedules and control costs.
- Experience and competence of project manager and key personnel.
- Innovations and flexibility in thinking, particularly with respect to the needs of the local community.
- Past performance record on similar projects.
- Past performance record of listed sub-consultants.
- Availability of listed staff.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be fifteen (15%) percent of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information section after the advertised project(s).

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), required information, and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. John L. Baker, P.E., District Engineer  
Engineering District 1-0  
1140 Liberty Street  
Franklin, PA 16323  
Attention: Mr. Michael L. McMullen, P.E.

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 P.M. prevailing time on the twentieth day following the date of this Notice.

Engineering District 1-0 will announce the firms that have been shortlisted at an open public meeting to be held in the District Office. All firms that have submitted a letter of interest will be notified of the time and date. Specify two (2) contact persons in the letter of interest.

Any technical questions concerning the requirements for this project should be directed to: Mr. David W. Ruhlman, P.E., at (814) 437-4311 or Mr. Michael L. McMullen, P.E., at (814) 437-4331.

**Lycoming County  
Project Reference No. 08430AG2341**

The Department of Transportation will retain an engineering firm to perform preliminary engineering, environmental studies, final design and services during construction for the replacement of a bridge carrying S.R. 2071, Section 001 over Muncy Creek in Wolf Township in Lycoming County. The project consists of rehabilitating or replacing an existing historic truss bridge. The estimated construction cost for this project is \$1.0 million.

The engineering firm will be required to perform field surveys; environmental studies to include archaeological studies and agency coordination as necessary; utilities; horizontal and vertical geometry; geological studies; core borings; type, size and location; drainage; preliminary field view; safety review; line, grade, and typical sections; erosion and sedimentation control plan; hydrologic and hydraulic report; waterway encroachment permit application; preliminary right-of way plan; public involvement; design field view submission; foundation design; construction plans, specifications and estimates. Work also shall include shop drawing review and approval, and engineering construction services during construction. The project shall be engineered using metric units.

The Department will establish an order of ranking of a minimum of three (3) firms based on the Department's evaluation of the letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to establishment of ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- a. Past performance of firm with respect to quality of work, administrative and cost controls, ability to meet schedules, and previous experience on structure engineering projects. The specific experience of individuals who constitute the firm shall be considered.
- b. Specialized experience and technical competence of firm.
- c. Resumes of key personnel and listing of proposed sub-consultants.
- d. Relative size of firm to size of project to be completed under this contract.

e. Demonstrated capacity for innovative engineering to resolve complex problems.

This project reference assignment is considered complex. The letter of interest shall be limited to a maximum of five (5) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), required information, and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Paul E. Heise, P.E., District Engineer  
Engineering District 3-0  
715 Jordan Avenue  
Montoursville, PA 17754

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 P.M. prevailing time on the twentieth day following the date of this Notice.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be fifteen (15%) percent of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information section after the advertised project(s).

The District will announce the firms that have been shortlisted at an open public meeting scheduled for June 16, 1999 at 10:00 A.M. at the Engineering District 3-0 office at 715 Jordan Avenue, Montoursville, PA. All candidates that submitted a letter of interest will be notified if this date changes. Specify a contact person in the letter of interest.

Any technical questions concerning the requirements for this project should be directed to: Mr. Gary R. Williams, District 3-0, at (570) 368-4391.

**Columbia, Lycoming, Montour, Northumberland,  
Snyder, Sullivan, Tioga, Union and  
Bradford Counties  
Project Reference No. 08430AG2342**

The Department of Transportation will retain an engineering firm for an Open-End Contract to provide supplementary construction inspection staff under the Department's Inspector(s)-in-Charge to perform construction inspection services on various projects in Engineering District 3-0, that is Columbia, Lycoming, Montour, Northumberland, Snyder, Sullivan, Tioga, Union and Bradford Counties. The Contract will include roadway and bridge construction projects, and material plant inspection. The Contract will be for a period of sixty (60) months, with a maximum cost of one million (\$1,000,000) dollars.

It is anticipated that a maximum supplementary construction inspection staff of twenty-five (25) inspectors will be required for this assignment.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- a. Review of inspectors' resumes with emphasis on construction inspection capabilities and specialized expe-

rience in the Maintenance and Protection of Traffic, soils, structures, concrete and asphalt paving, drainage, wetlands, CPM schedule monitoring and plant inspection.

- b. Understanding of Department's requirements, policies, and specifications.
- c. Number of NICET and NECEPT certified inspectors in each payroll classification.
- d. Number of available inspectors in each payroll classification.
- e. Ability to provide CPM scheduling.
- f. Past performance.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Manager 1 (TCM-1) (NICET Highway Construction Level 4 or equivalent)	1 (1)
Transportation Construction Ins. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	10 (6)
Transportation Construction Inspector—Materials (TCI-Materials) (NICET Highway Materials Level 2 or equivalent)	2 (2)
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	10 (6)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	2 (2)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.
2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.
5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The number(s) in parenthesis above also indicate the number of inspectors in each classification (except Technical Assistant) that must be certified by the Northeast Center of Excellence for Pavement Technology (NECEPT)

as a Field Technician for TCM-1, TCIS and CTI and as a Plant Technician for TCI-M. Certified for Technical Assistants is not required.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCM-1)	\$46.27
(TCIS)	\$40.54
(TCI-Materials)	\$36.55
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item; provide inspection of work being performed under highway occupancy permits, at material producing plants, and of utility construction and perform other duties as may be required. *Firms applying must have qualified personnel capable of climbing structures during painting, rehabilitation, or construction.*

Letters of interest for this project must include a letter, signed by the individuals you propose for all TCM-1 and/or TCIS positions, giving their approval to use their name in your letter of interest for this specific project. The Technical Assistant does not need to be identified in the letter of interest.

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCM-1	2
TCIS	12
TCI-M	3
TCI	12

No resumes are required for the TA Classification.

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), required information, and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Paul E. Heise, P.E., District Engineer  
Engineering District 3-0  
715 Jordan Avenue  
Montoursville, PA 17754

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 P.M. prevailing time on the twentieth day following the date of this Notice.



Any technical questions concerning the requirements for this project should be directed to: Mr. John P. Ryan, P.E., District 3-0, at (570) 368-4233.

**Erie County  
Project Reference No. 08430AG2343**

The Department of Transportation will retain an engineering firm for an Open-End Contract to provide supplementary construction inspection staff under the Department's Inspector(s)-in-Charge to perform construction inspection services on various projects in Engineering District 1-0, Erie County. The Contract will include roadway and bridge construction projects, and material plant inspection. The Contract will be for a period of thirty (30) months, with a maximum cost of one million (\$1,000,000) dollars.

It is anticipated that a maximum supplementary construction inspection staff of twenty-five (25) inspectors will be required for this assignment.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

- a. Review of inspectors' resumes with emphasis on construction inspection capabilities and specialized experience in the Maintenance and Protection of Traffic, soils, structures, concrete, asphalt paving, and drainage.
- b. Understanding of Department requirements, policies and specifications.
- c. Past performance.
- d. Number of NICET certified inspectors in each payroll classification.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Manager 1 (TCM-1) (NICET Highway Construction Level 4 or equivalent)	1 (1)
Transportation Construction Ins. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	4 (3)
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	15 (9)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	5 (3)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.
2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.
4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.
5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCM-1)	\$46.27
(TCIS)	\$40.54
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item; at least two (2) inspectors listed are to be nuclear gauge certified and one (1) to be C.D.S. certified; and perform other duties as may be required. Firms applying must have qualified personnel capable of climbing structures during painting, rehabilitation, or construction.

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 2 Nuclear Densometer Gauges/License
- 1 Vehicle for the Transportation of Nuclear Gauge
- 5 Cellular Phones
- 5 35mm Cameras (including film and developing)
- 2 Survey Equipment, (rod, level, tapes, etc.)

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCM-1	1
TCIS	4
TCI	18

No resumes are required for the TA Classification.

This project reference assignment is considered non-complex. The letter of interest shall be limited to a maximum of three (3) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), required information, and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. John L. Baker, P.E., District Engineer  
Engineering District 1-0  
1140 Liberty Street  
Franklin, PA 16323

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 p.m. prevailing time on the twentieth day following the date of this Notice.

Any technical questions concerning the requirements for this project should be directed to: Mr. David W. Ruhlman, P.E., District 1-0, at (814) 437-4311.

**Adams, Cumberland, Dauphin and York Counties  
Project Reference No. 08430AG2344**

The Department of Transportation will retain an engineering firm to provide construction management support and services and supplementary construction inspection staff of approximately twenty (20) inspectors, under the Department's Inspector(s)-in-Charge for construction inspection and documentation services on the following projects:

1. S.R. 0015, Section 009, York and Adams Counties Local Name: Range Road, York County to Ridge Road, Adams County This project involves roadway resurface, drainage updates, guide rail improvements and two (2) bridge rehabilitations. (Night Shift Work)

2. S.R. 0015, Section A12, Cumberland County Local Name: U.S. 15 and Lisburn Road between York County line and PA-114 This project involves complete reconstruction of the Lisburn Road Interchange, excavation, pavement, drainage, guide rail/barrier walls, signalization and structures. (Night Shift Work)

3. S.R. 3016, Section 002, Dauphin County Local Name: Harvey Taylor Bridge over the Susquehanna River This project involves bridge rehabilitation - addition of two (2) bike lanes. Placement of structural steel and painting. (Night Shift Work)

The anticipated duration of construction is thirty (30) months.

The required services for construction management support will include the following:

Analyze contractor's CPM schedules and monitor progress during construction; review, make recommendations and prepare correspondence for signatures on specific utility, structure, roadway and other related facilities problems during the construction phase; attend preconstruction meetings; review and evaluate value engineering efforts submitted to the Department for all elements of construction; monitor and track all submissions including shop drawings for timely responses from appropriate agencies or individuals; review any design or construction change responses; coordinate and participate in community relations including personal contacts and community meetings; assist Department in public relations and press releases; review and prepare responses on potential claims and assist in claim negotiations; furnish change order evaluation assistance and expedite and assist in routine problem solving for field construction.

The Department will establish an order of ranking of a minimum of three (3) firms for the purpose of negotiating an Engineering Agreement based on the Department's evaluation of the acceptable letters of interest received in response to this solicitation. The ranking will be established directly from the letters of interest. Technical proposals will not be requested prior to the establishment of the ranking.

The following factors, listed in order of importance, will be considered by the Department during the evaluation of the firms submitting letters of interest:

a. Review of inspectors' resumes with emphasis on construction inspection capabilities and specialized experience in the Maintenance and Protection of Traffic, soils, structures, concrete, asphalt paving, drainage, construction documentation procedures, "CDS" operations, structures and painting of structural steel.

b. Number of NICET certified inspectors in each payroll classification.

c. Number of N.E.C.E.P.T. certified inspectors, with the exception of TCM-1 and TA personnel, as indicated below:

First Year	50%
Second Year	75%
Third Year	100%

d. Number of available inspectors in each payroll classification.

e. Understanding of Department's requirements, policies, and specifications.

The qualifications and experience required of the firm's inspectors will be established by the Department, and the qualifications of the firm's proposed employees will be reviewed and approved by the Department.

It is anticipated that the supplementary construction inspection staff for this assignment will consist of the following number of inspectors who meet the requirements for the following inspection classifications:

<i>Classification</i>	<i>No. of Inspectors</i>
Transportation Construction Manager 1 (TCM-1) (NICET Highway Construction Level 4 or equivalent)	1 (0)
Transportation Construction Ins. Super. (TCIS) (NICET Highway Construction Level 3 or equivalent)	3 (3)
Transportation Construction Inspector (TCI) (NICET Highway Construction Level 2 or equivalent)	11 (8)
Technical Assistant (TA) (NICET Highway Construction Level 1 or equivalent)	5 (0)

The number(s) in parenthesis above indicate the number of inspectors in each Classification that must meet at least one of the following requirements:

1. Be certified by the National Institute for Certification in Engineering Technologies (NICET) in the field of Transportation Engineering Technology, subfield of Highway Construction, or subfield of Highway Materials, at the Level required for the Inspection Classification.

2. Be registered as a Professional Engineer by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

3. Be certified as an Engineer-in-Training by the Commonwealth of Pennsylvania with the required highway experience specified for the Inspection Classification.

4. Hold a Bachelor of Science Degree in Civil Engineering or a Bachelor of Science Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

5. Hold an Associate Degree in Civil Engineering Technology with the required highway experience specified for the Inspection Classification.

The maximum reimbursement per hour of inspection for each Department Payroll Classification for calendar year of 1999:

<i>Payroll Classification</i>	<i>Maximum Straight Time Reimbursement Per Hour Of Inspection</i>
(TCM-1)	\$46.27
(TCIS)	\$40.54
(TCI)	\$35.47
(TA)	\$24.39

The maximum reimbursement per hour of inspection includes all costs for providing construction inspection services at the project site during the normal work week.

Maximum reimbursement per hour of inspection for subsequent calendar years, if applicable, will be established at the scope of work meeting.

The firm selected may be required to attend a pre-construction conference with the Department and the construction contractor for this project. Under the supervision and direction of the Department, the selected firm will be required to keep records and document the construction work; prepare current and final estimates for payment to the construction contractor; assist the Department in obtaining compliance with the labor standards, safety and accident prevention, and equal opportunity provisions of the contract item; and perform other duties as may be required. *Firms applying must have qualified personnel capable of climbing structures during painting, rehabilitation, or construction.*

The firm selected will be required to supply the following equipment at no direct cost to the Department:

- 2 Nuclear Densometer Gauges/License
- 3 Paint Test Kits
- 2 Vehicles for the Transportation of Nuclear Gauges
- 10 Cellular Phones
- 6 Camera (type 3-Digital 35mm and 3-std. 35mm)
- 21 Pagers

This project reference assignment is considered complex. The letter of interest shall be limited to a maximum of five (5) pages, 8 1/2" x 11", one sided, plus an organizational chart (up to 11" x 17" size), required information, and additional resumes, if applicable. (See the General Requirements and Information Section).

The Letter of Interest submission shall be sent to:

Mr. Barry G. Hoffman, P.E., District Engineer  
Engineering District 8-0  
2140 Herr Street  
Harrisburg, PA 17103-1699  
Attention: Construction Unit

The Letter of Interest submission for this project reference number must be received at the address listed above by 4:30 P.M. prevailing time on the twentieth day following the date of this Notice.

The goal for Disadvantaged Business Enterprise (DBE) participation in this Agreement shall be fifteen percent (15%) of the total contract price. Additional information concerning DBE participation in this Agreement is contained in the General Requirements and Information Section after the advertised project(s).

Letters of interest for this project must include a letter, signed by the individuals you propose for all TCM-1 and/or TCIS positions, giving their approval to use their name in your letter of interest for this specific project.

The maximum number of resumes to be included in the letter of interest shall be as follows:

<i>Classification</i>	<i>No. of Resumes</i>
TCM-1	2
TCIS	4
TCI	14

No resumes are required for the TA Classification.

Any technical questions concerning the requirements for this project should be directed to: Mr. Richard K. Waddell, District 8-0, at (717) 787-5054.

#### **General Requirements and Information**

Firms interested in providing the above work and services are invited to submit a Letter of Interest with the required information for each Project Reference Number for which the applicant wishes to be considered.

The Letter of Interest and required information must be submitted to the person designated in the individual advertisement.

The Letter of Interest and required information must be received by the Deadline indicated in the individual advertisement.

All consultants, both prime consultants and subconsultants, who desire to be included in a Letter of Interest must have an Annual Qualification Package on file with the appropriate District Office, by the deadline stipulated in the individual advertisements.

For Statewide projects, all consultants, both prime consultants and subconsultants, who desire to be included in a Letter of Interest must have an Annual Qualification Package on file with the Central Office, Bureau of Design by the deadline stipulated in the individual advertisements.

By submitting a letter of interest for the projects that requests engineering services, the consulting firm is certifying that the firm is qualified to perform engineering services in accordance with the laws of the Commonwealth of Pennsylvania.

Information concerning the Annual Qualification Package can be found in Strike-off Letter No. 433-99-04 or under the Notice to all Consultants published in the February 27, 1999 issue of the Pennsylvania Bulletin.

If a Joint Venture responds to a project advertisement, the Department of Transportation will not accept separate Letters of Interest from the Joint Venture constituents. A firm will not be permitted to submit a Letter of Interest on more than one (1) Joint Venture for the same Project Reference Number. Also a firm that responds to a project as a prime may not be included as a designated subcontractor to another firm that responds as a prime to the project. Multiple responses under any of the foregoing situations will cause the rejection of all responses of the firm or firms involved. The above does not preclude a firm

from being set forth as a designated subcontractor to more than one (1) prime responding to the project advertisement.

If a goal for Disadvantaged Business Enterprise (DBE) participation is established for an advertised project, firms expressing interest in the project must agree to ensure that Disadvantaged Business Enterprise (DBE) firms as defined in the Transportation Equity Act for the 21st century (TEA-21) and currently certified by the Department of Transportation shall have the maximum opportunity to participate in any subcontracting or furnishing supplies or services approved under Form 442, Section 1.10(a). The TEA-21 requires that firms owned and controlled by women (WBEs) be included, as a presumptive group, within the definition of Disadvantaged Business Enterprise (DBE). The goal for DBE participation shall be as stated in the individual project advertisement. Responding firms shall make good faith efforts to meet the DBE goal using DBEs (as they are defined prior to the act, WBEs or combinations thereof).

Proposing DBE firms must be certified at the time of submission of the Letter of Interest. If the selected firm fails to meet the established DBE participation goal, it shall be required to demonstrate its good faith efforts to attain the goal.

Responses are encouraged by small firms, Disadvantaged Business Enterprise (DBE) firms, and other firms who have not previously performed work for the Department of Transportation.

The assignment of the agreement/contract for the above advertisement(s) will be made to one of the firms who submitted an acceptable Letter of Interest in response to the project advertisement. The assignment will be made based on the Department's evaluation of the firm's qualification and capabilities. The Department reserves the right to reject all letters submitted, to cancel the solicitations requested under this Notice, and/or to readvertise solicitation for the work and services.

BRADLEY L. MALLORY,  
*Secretary*

[Pa.B. Doc. No. 99-723. Filed for public inspection April 30, 1999, 9:00 a.m.]

## ENVIRONMENTAL HEARING BOARD

**Birdsboro and Birdsboro Municipal Authority v.  
DEP; EHB Doc. No. 99-071-C**

Birdsboro and Birdsboro Municipal Authority have appealed the issuance by the Department of Environmental Protection of an NPDES permit to same for a facility in Robeson and Union Townships, Berks County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, and may be reviewed by an interested party on request during normal business hours. If information concerning this notice is required in an alternative form, contact the Secretary to

the Board at (717) 787-3483. TDD users may telephone the Board through the AT&T Pennsylvania Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.62. Copies of the Board's rules of practice and procedure are available upon request from the Board.

GEORGE J. MILLER,  
*Chairperson*

[Pa.B. Doc. No. 99-724. Filed for public inspection April 30, 1999, 9:00 a.m.]

## HEALTH CARE COST CONTAINMENT COUNCIL

### Meeting Dates

The Health Care Cost Containment Council (Council) has scheduled the following meetings for May: Wednesday May 5, 1999 Data Systems Committee at 10 a.m.; Education Committee 1:30 p.m. The committee meetings will be held in the Council's Conference Room at 225 Market Street, Suite 400, Harrisburg, PA, May 6, 1999, Council meeting at 10 a.m. The Council meeting will be held at the Radisson Penn Harris Hotel and Convention Center, 1150 Camp Hill Bypass, Camp Hill, PA 17011. Please check the Convention Center Bulletin Board for the conference room number. The public is invited to attend. If you need accommodation due to a disability and want to attend the meetings, please contact Cherie Elias, Health Care Cost Containment Council, 225 Market Street, Suite 400, Harrisburg, PA 17101, or call (717) 232-6787, at least 24 hours in advance so that arrangements can be made.

MARC P. VOLAVKA,  
*Executive Director*

[Pa.B. Doc. No. 99-725. Filed for public inspection April 30, 1999, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (act) (71 P. S. § 745.5(g)) provides that the designated standing committees may issue comments within 20 days of the close of the public comment period, and the Commission may issue comments within 10 days of the close of the committee comment period. The Commission comments are based upon the criteria contained in section 5a(h) and (I) of the act (71 P. S. § 745.5a(h)(I)).

The Commission has issued comments on the following proposed regulations. The agency must consider these comments in preparing the final-form regulation. The final-form regulations must be submitted by the dates indicated.

*Final-Form  
Submission  
Deadline*

<i>Reg No.</i>	<i>Agency/Title</i>	<i>Issued</i>	<i>Final-Form Submission Deadline</i>
10-155	Department of Health Public Swimming and Bathing Places (29 Pa.B. 820 (February 13, 1999))	4/15/99	3/15/01
10-143	Department of Health Emergency Medical Services (29 Pa.B. 903 (February 13, 1999))	4/15/99	3/15/01

*Department of Health Regulation No. 10-155  
Public Swimming and Bathing Places  
April 15, 1999*

We have reviewed this proposed regulation from the Department of Health (Department) and submit for consideration the following objections and recommendations. Section 5.1(h) and (i) of the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) specifies the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, legislative intent, protection of the public health, reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

**1. Section 18.1 Definitions—Statutory Authority and Legislative Intent**

The Department incorporated the statutory definition of "recreational swimming establishment," but has added a sentence not contained in the statute. This additional sentence provides that "When a facility otherwise excluded by this definition provides access to the general public and charges a fee for admission, it shall be considered a recreational swimming establishment." This language is contrary to the language and intent of Act 75 of 1998 (act).

The Department added the language to encompass facilities, such as hotels and motels, which may allow the general public to use the facility for a fee. This is contrary to the intent of the General Assembly because it will include facilities, such as hotels and motels, which the act specifically excluded.

The Department should delete the last sentence in the definition of recreational swimming establishment to be consistent with the act.

**2. Section 18.42(a) Certified Lifeguards—Clarity**

Subsection (a) provides the criteria that the Department will use to determine who will qualify as a lifeguard certifying authority. Each facility must determine that its lifeguards have completed a certification program which matches these criteria. Facilities may have difficulty making this comparison or may not interpret the criteria in the same manner as the Department. Therefore, annually the Department should publish a list of those organizations that qualify as a lifeguard certifying authority.

Subsection (a)(8) provides that a lifeguard certifying authority must use instructors that have completed an approved lifeguard instructors' certification program. The regulation does not indicate what an approved lifeguard instructors' certification program is or who approves these programs; it should. Alternatively, the Department could

publish an annual notice in the *Pennsylvania Bulletin* listing the approved lifeguard instructors' certification programs.

**3. Section 18.42(b) Required Number of Lifeguards—Legislative Intent, Protection of the Public Health, Reasonableness and Clarity**

*What is adequate lifeguard coverage?*

Section 4.1(b) of the act provides that "The Department shall promulgate regulations to determine the number of lifeguards required at a recreational swimming establishment using objective criteria that takes into consideration industry standards." The regulation does not completely meet the intent of this provision. Instead, subsection (b) provides only vague criteria of what is considered adequate lifeguard coverage.

Commentators also questioned the lack of definitive standards for adequate lifeguard coverage. The Pennsylvania Recreation and Park Society believes the regulation should specify the required number of lifeguards for a particular pool contingent on the size of the facility, participants on site, support staff and scheduled activities. We concur. Although it may not be feasible to include specific numbers in the regulation, the Department can include more definitive criteria to determine adequate lifeguard coverage.

*Department review of lifeguard coverage plan*

The regulation also does not meet the legislative intent of the act because the Department will not be reviewing the lifeguard coverage plan. Section 8 of the act amended the Public Bathing Law to allow inspection of facilities to determine if a facility has an adequate number of certified lifeguards. Section 8 specifically provides that such examinations and investigations can be used to determine "whether the provisions of this act and the rules and regulations of the department are being complied with or are being violated."

Senators Mowery and Hughes, Majority and Minority Chairs of the Senate Public Health and Welfare Committee, expressed concern that the Department will not be approving the lifeguard coverage plan. They commented that the act required more involvement by the Department.

To address these concerns, the regulation could include a process for approving the lifeguard coverage plan. For currently permitted facilities, this may be accomplished as part of the annual inspection. For new facilities, this can be completed as part of the permitting process. The regulation should specify the following:

- A resolution process for the Department and facility to address any deficiencies in the lifeguard coverage plan.
- A process for a facility to amend its plan due to a change in operation.
- The Department's criteria for closing a facility.
- A resubmission process following Department disapproval.

#### 4. Timeframe for Compliance—Reasonableness

The regulation does not indicate when recreational swimming establishments must begin employing certified lifeguards and have a completed lifeguard coverage plan. The final regulation should specify a reasonable time period after final publication for facilities to meet the new requirements.

#### 5. Advance Notice of Final Rulemaking

If the Department amends the rulemaking to include more specific standards on adequate lifeguard coverage and a process for approval of a plan, it should consider issuing an advance notice of final rulemaking. An advance notice will give those establishments subject to the rulemaking an opportunity to review and comment on the new standards.

Department of Health Regulation No. 10-143  
Emergency Medical Services  
April 15, 1999

We have reviewed this proposed regulation from the Department of Health (Department) and submit for your consideration the following objections and recommendations. Sections 5.1(h) and (i) of the Regulatory Review Act (71 P. S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to economic impact, feasibility, need, reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

#### 1. Section 1001.2. Definitions—Reasonableness and Clarity

##### *"Ambulance call report"*

"Ambulance call report" is defined as a summary of ambulance responses and transports that "shall contain information specified in a format provided by the Department." The last sentence of the definition is a substantive requirement. Substantive requirements in definitions are not enforceable. Therefore, this sentence would be more appropriately placed in § 1001.41 (Data and information requirements for ambulance services).

##### *"Board certification"*

This definition limits "board certification" to physicians certified by the American Board of Medical Specialties (ABMS) and American Osteopathic Association (AOA). Several commentators, including Representative Leo J. Trich and the Pennsylvania Academy of Family Physicians, expressed the concern that this definition may unduly limit the number of physicians who can qualify as medical command physicians. In addition, some commentators indicated that physicians who do not have ABMS or AOA certification, but currently hold medical command positions, may no longer be qualified for these positions when the proposed regulation is adopted. The Depart-

ment should justify the need and reasonableness of limiting "board certification" to ABMS or AOA certification.

##### *"Medical Command Base Station Course"*

This definition refers to a course that "provides an overview of the medical command system and base station direction." Although there is a definition for the term "medical command," there is no definition for the term "base station." Because the term "base station" is used in the regulation, the Department should define the term.

##### *"Medical coordination"*

In Subparagraph (iv), the term "medical" was deleted in front of the word "treatment" in the *Pennsylvania Bulletin*. The Department's draft reads: "*Transfer and [M]medical treatment protocols.*" Because the term "medical treatment protocols" is included as a separate definition, the word "medical" should be retained.

##### *"Prehospital personnel"*

The definition lists the two terms "prehospital registered nurses" and "health professional physicians" separately. They are combined into one term by the definition of "health professional" in the Emergency Medical Services Act (act) and this regulation. Rather than include both terms, the definition of "prehospital personnel" should simply list the term "health professional."

##### *"Receiving facility"*

Commentators questioned the need for including the term "cardiac" and suggested that the term "medical" was all that was necessary. Others suggested the terms "medical and psychiatric" be added to the list of terms describing the types of emergencies that a physician is trained to manage at a receiving facility. At a minimum, the term "medical" should be included. The Department should carefully review the commentators' concerns and revise the definition to insure that it accurately describes a "receiving facility."

##### *"Service area"*

The definition states a "service area" is an "area in which an ambulance service routinely provides services." In the Preamble, the Department explains the definition is added to clarify which political subdivisions an ambulance service must notify when it is going out of business. Any political subdivision that relies on the ambulance service would need notice, regardless of how "routinely" services were provided. Accordingly, the Department should delete the word "routinely" from the definition.

#### 2. Section 1001.4. Exceptions—Reasonableness and Clarity

In the Preamble, the Department refers to this section and uses the phrase "standards equal to or greater than those employed by the private certifying bodies." However, the phrase "standards equal to or greater than" does not appear in this section of the regulation. The Department should explain what standards and procedures will be used for granting exceptions to certification requirements. Since the phrase, "standards equal to or greater than," is not in § 1001.4, it is unclear how this criterion will be used. The Department should describe this process and clarify this section.

The regulation adds a new § 1001.4(f), which states that the Department may grant an exception if "the substantive requirements of subsection (a) are satisfied." The Department should identify the "substantive require-

ments” referred to in subsection (a) and explain the process for determining whether they are satisfied. Additionally, the Department should either explain what is a “justifiable reason” or delete the phrase “for justifiable reason” from the first sentence in subsection (a).

### **3. Section 1001.5. Investigations—Reasonableness, Need for Rule and Clarity**

This section is being revised to read: “The Department may investigate any person, entity or activity for compliance with the provisions of the act or this part.” In contrast, section 5(b)(13) of the act (35 P. S. § 6925(b)(13)) states that the Department shall have the authority to: “Investigate complaints related to the delivery of services by trauma centers and forward the results of the investigation to the accrediting entity with a recommendation for action.” The Department should explain its intent for this section and should identify its authority and power to investigate matters related to the act.

### **4. Section 1001.24. Application for contract—Clarity**

Section 1001.24(2) and (3) requires applicants for funding to include information about their “organizational structure.” Since the term is used in paragraph (2), paragraph (3) may be redundant and unnecessary. Either the term “organizational structure” should be deleted from paragraph (2) or paragraph (3) should be deleted.

### **5. Section 1001.25. Technical assistance—Clarity.**

The purpose of the last sentence in subsection (a) is unclear. It reads: “Special consideration shall be given to contractors in rural areas.” The Department should revise the sentence to clarify its purpose, or delete it.

### **6. Section 1001.41. Data and information requirements for ambulance services—Reasonableness, Feasibility and Clarity.**

The proposed regulation deletes a list of specific items to be included in the “ambulance call report.” The preamble and the definition of this term states that the required information will be in a format provided by the Department. However, the regulation does not indicate how ambulance services will obtain this format. The regulation should specify where ambulance services may obtain copies of the required contents and format for the ambulance call report.

Several ambulance services questioned the need for ambulance staff to complete and submit a full ambulance call report within 24 hours of concluding service. This new requirement is in § 1001.41(d). The Department should explain the need for the 24-hour requirement and whether there may be exceptions to the rule.

Commentators questioned the process for submitting the ambulance call report. Some questioned the cost of submitting it by e-mail. Others asked if it was acceptable to fax the completed call report. We note that the submittal or delivery process must also be compatible with the specific receiving facility. Therefore, the regulation should identify all of the acceptable methods for submitting and transmitting the data.

### **7. Section 1001.65. Cooperation—Clarity**

This section is one long sentence. It should be separated into at least two sentences. The first sentence could end after the words: “quality improvement programs.” The next sentence would state that EMS personnel and entities “will provide data, reports and access to records as requested. . . .”

### **8. Section 1001.123. Responsibilities—Clarity**

This section lists the responsibilities of regional EMS councils. Section 100.123(20) reads: “Performing other duties deemed appropriate by the Department.” This subsection should end with the phrase: “regarding the responsibilities of regional EMS councils.”

### **9. Section 1001.161. Research—Reasonableness and Feasibility**

This section is being revised to give the Department the sole authority to control both the flow of clinic investigation proposals as well as their final approval. The Department should explain why it needs to review proposals for merit before it refers proposals to the Board of Directors of the Pennsylvania Emergency Health Services Council and regional EMS councils.

### **10. Section 1003.1. Commonwealth Emergency Medical Director—Clarity**

Subsection (a)(5) lacks clarity due to its length and the subjects covered. Existing subsection (a)(5) covers only the responsibility for medical protocols. The language added to subsection (a)(5) expands the responsibilities to include transfer protocols and additional medical criteria. The regulation would be clearer if medical responsibilities and transfer responsibilities were in separate paragraphs.

### **11. Section 1003.2. Regional EMS medical director—Clarity**

Subsection (a)(1) and (3)—(6) state the regional EMS medical director’s duty is to “assist” the regional EMS council. The word “assist” does not designate a specific duty or function to the EMS medical director. For example, in subsection (a)(1) it is not clear how the EMS medical director would fulfill the duty to assist the regional EMS council to approve or reject an application. The duty to assist could range from simply being available to answer questions to making an actual recommendation on each application for the EMS council to consider. Subsection (a)(1) and (3)—(6) should be clearer regarding the duty of the EMS medical director.

### **12. Section 1003.3. Medical command facility medical director—Clarity**

The amendment to § 1003.3(b)(1)(ii) substantially duplicates § 1003.4(b)(2). Existing § 1003.3(b)(1)(i) requires a medical command facility medical director to be a medical command physician. The minimum qualifications for a medical command physician are found in § 1003.4(b). Section 1003.3(b)(1)(ii) should be amended to only specify qualifications in addition to the minimum qualifications for a medical command physician.

### **13. Section 1003.4. Medical command physician—Need and Clarity**

#### *Subsection (b) Minimum qualifications.*

The regulation is not clear regarding the process and standards the Department will use to qualify medical command physicians who do not have board certification in emergency medicine. The Department explained that physicians without board certification, as defined in § 1001.2, may qualify as medical command physicians through § 1003.4(b)(2). We note that § 1001.4 Exceptions does not appear to be the process by which the Department grants exceptions to board certification for medical command physicians.

Subsection (b)(2) concludes with the phrase “or other programs determined by the Department to meet or exceed the standards of those programs.” It is not clear what other “programs” would meet or exceed the stan-

dards of board certification in emergency medicine. For example, would the Department consider physicians qualified based on their experience in emergency medicine rather than board certification? Would the Department grandfather currently approved medical command physicians who do not have board certification? The Department should explain the following:

- a) The process whereby a physician may qualify without board certification.
- b) What other programs or experience the Department anticipates will meet or exceed the standards of board certification in emergency medicine.
- c) The effect of the regulation on existing medical command physicians and those who require medical command physician status for their positions who are not board certified.
- d) The effect on EMS systems that currently employ medical command physicians who are not board certified.

Finally, subsection (b)(2) is not clear in two regards. First, it is not clear which specific programs may be met or exceeded. The alternative in paragraph (b)(2) could be interpreted to apply only to individual course requirements, only to board certification in emergency medicine, or both. Second, the regulation is also not clear concerning which courses only need to be taken once rather than every 2 years. The Department should amend subsection (b)(2) to clarify its intent.

*Subsection (c) Approval of medical command physician.*

Paragraphs (2) and (3) provide parameters for the regional EMS council to use in evaluating the approval of medical command physicians. It is not clear why the regional EMS council's parameters are included in the provisions for medical command physicians. The Department should move paragraphs (2) and (3) to the provisions for regional EMS councils in Subchapters F and G.

Paragraph (2) requires the physician to meet the qualifications in subsection (b), or to complete "voluntary medical command certification program administered by the Department." The regulation is not clear concerning how this voluntary certification is a substitute for the six specific qualifications listed in subsection (b). The Department should explain which qualifications in subsection (b) could be acquired through the "voluntary medical command certification program administered by the Department."

Paragraph (3) requires the physician to "establish" that he is working under the auspices of a medical command facility. It is not clear how a physician would satisfy this requirement. The Department should amend the regulation to state how it would be determined whether the physician is in compliance.

Subsection (c)(3)(i) provides a waiver from Department recognition. The waiver is determined by the regional EMS council. The Department should explain why it is appropriate for the regional EMS council to make determinations on equivalencies for Department recognition.

*Subsection (d) Notice requirements.*

Paragraphs (1) and (2) set forth requirements for medical command facilities and regional EMS councils, not the medical command physician. The Department should move paragraphs (1) and (2) to the appropriate provisions under § 1009.1, or Subchapter F or G.

**14. Section 1003.5. ALS service medical director—Clarity**

The phrase "Providing guidance to the ALS ambulance with respect to" in § 1003.5(a)(1)(ii) is not needed. It duplicates the introduction of the list in subsection (a)(1). The phrase also lacks clarity because it uses the designation of "ALS ambulance" rather than the defined term "ALS ambulance service." Accordingly, the Department should delete this phrase from § 1003.5(a)(1)(ii).

**15. Section 1003.21. Ambulance attendant—Clarity**

Section 1003.21 references advanced first aid sponsored by the American Red Cross. One commentator stated that the American Red Cross does not offer an advanced first aid course. The Department should review § 1003.21 to assure its requirements are consistent with the courses that are available.

**16. Section 1003.22. First responder—Clarity**

The specific intent of subsection (e)(4) is not clear. It appears to state that some courses are offered which may not be counted as continuing education credits or may not be used to expand the scope of the first responder's duties. The Department should amend subsection (e)(4) to clarify its intent.

**17. Section 1003.23. EMT—Clarity**

Subsection (e)(2) only allows an EMT to transport a patient with an intravenous catheter without medication running. One commentator stated that subsection (e)(2) may be overly restrictive. Many outpatients are using patient controlled devices, or are using devices monitored by visiting nurses in the home. The commentator suggests adding an exception to allow transport when the medication is part of the patient's normal outpatient treatment plan. The Department should explain how outpatient medication will be administered in this situation.

The specific intent of subsection (e)(3) is not clear. It appears to state that some courses are offered which may not be counted as continuing education credits or may not be used to expand the scope of the EMT's duties. The Department should amend subsection (e)(3) to clarify its intent.

**18. Section 1003.24. EMT-paramedic—Clarity**

Annex A and the preamble of the proposed regulation both indicate that subsection (c) Transition of EMT-paramedic I and EMT-paramedic II certification to EMT-paramedic is to be deleted. However, a bracket to indicate the deletion of subsection (c) was omitted in the regulation. The Department should ensure the proper placement of brackets for the deletion of subsection (c) in the final-form rulemaking.

The specific intent of subsection (d)(19) is not clear. It appears to state that some courses are offered which may not be counted as continuing education credits or may not be used to expand the scope of the EMT-paramedic's duties. The Department should amend subsection (d)(19) to clarify its intent.

**19. Section 1003.25b. Prehospital registered nurse—Clarity**

Subsection (c) *Scope of practice*, as amended, will include "... other ALS services authorized by Professional Nursing Law. . . ." We were unable to locate any reference to Advanced Life Support (ALS) services in the Professional Nursing Law. The existing regulation allows any service authorized by the Professional Nurses Law. It is not clear what services would be authorized under the



amended language of "other ALS services authorized by Professional Nursing Law." The Department should delete the acronym ALS from subsection (c), or explain how it applies.

**20. Section 1003.28. Medical command personnel—Clarity**

The first two sentences of subsection (b)(3) and the last sentence of subsection (c)(2) lack clarity due to their length. These subsections would be clearer if they were broken into shorter sentences, or where appropriate, a list of requirements. The Department should amend subsections (b)(3) and (2) to clarify its intent.

**21. Section 1003.29. Continuing education requirements—Clarity**

Subsections (a)(1) and (b)(1) require that during the first full certification period, half of the continuing education credits must be in medical and trauma education. It is not clear whether this requirement only applies to the first certification period, or whether this is a requirement for all recertifications. The Department should clarify the intent of the language in subsections (a)(1) and (b)(1).

**22. Section 1003.31. Credit for continuing education—Clarity**

The term "prehospital practitioner" is used throughout § 1003.31. The term "prehospital practitioner" lacks clarity because it is not defined in § 1001.2. However, § 1001.2 does have a definition of "prehospital personnel." The Department should delete the term "prehospital practitioner" from § 1003.31 and replace it with the defined term "prehospital personnel."

**23. Section 1005.1. General Provisions—Clarity**

The first word "No" in the second sentence of § 1005.1(a) is bracketed for deletion in the *Pennsylvania Bulletin*. This deletion is problematic because nothing is proposed to replace the first word. This error needs to be corrected by replacing "No" with the word "A." A similar change is needed for consistency in subsection 1007.1(a) relating to general provisions for licensing of air ambulance services.

In addition, the word "exempted" in the last phrase of subsection 1005.1(a) is also deleted in the *Pennsylvania Bulletin*. In the Department's draft, the word is retained in the phrase: "or is exempted from these prohibitions under the act." This phrasing is also consistent with the last words in § 1007.1(a). The word "exempted" needs to be restored or the end of the subsection will be unclear.

**24. Section 1005.6. Out-of-State providers—Reasonableness and Clarity**

This section states that "ambulance services located or headquartered outside of this Commonwealth that regularly engages in the business of providing emergency medical care and transportation of patients from within this Commonwealth. . ." are required to be inspected and licensed by the Department. First, the word "engages" should be "engage" to agree with the plural noun. Second, the term "regularly" is vague. The Department should explain whether all out-of-state providers who provide service in Pennsylvania are required to be inspected and licensed by the Department.

**25. Section 1005.10(d). Personnel requirements—Economic Impact, Reasonableness and Clarity**

Section 1005.10(d)(1)(iii) requires staff to commit to being available at specified times. Volunteer services may not be able to meet a "duty roster" that requires staff to "commit" to being available at specific times. Commenta-

tors suggest that the Department use an outcome-based or performance standard. If adequate service is being provided, the Department should explain why volunteers should be required to make specific commitments.

**26. Section 1005.10(i). Accident, injury and fatality reporting—Reasonableness and Clarity**

Section 1005.10(i) requires reporting of an "injury . . . that results in medical treatment at a facility." It is not clear what degree of injury would require reporting. These facilities may treat the individuals for very minor injuries. The Department should revise 1005.10(i) to state what degree of injury must be reported.

**27. Section 1009.1. Operational criteria—Clarity**

Paragraph (12) requires the medical command facility to maintain communication records and tapes. However, one commentator questioned how long the records and tapes must be kept. The Department should provide guidance for the length of time records are to be maintained under paragraph (12).

**28. Section 1009.2. Recognition process—Need and Clarity**

There appears to be a typographical error in subsection (a). The word "medical" appears twice in succession.

**29. Chapter 1011. Accreditation of training institutes—Clarity**

Section 1001.2 deletes the definition of "BLS training institute" and adds the definition of "EMS training institute." However, the language in Chapter 1011 repeatedly uses the phrase ALS and BLS training institute, but does not use the new phrase "EMS training institute." The term, "EMS training institute" should be used consistently.

**30. Section 1011.1. BLS and ALS training institutes—Clarity**

The subparagraph designations under paragraph (b)(1) have a typographical error. The second subparagraph should be (ii), not (iii).

In subsection (f)(4) the regulation references a "Prehospital Practitioner Manual." Section 1001.2 defines a "Prehospital Personnel Training Manual." The Department should revise the reference in subsection (f)(4) to "Prehospital Personnel Training Manual," or explain if another manual is referenced.

Subsections (g) and (h) provide for clinical and field preceptors at ALS training institutes. One commentator suggested using clinical and field preceptors at BLS training institutes. Is there a specific reason the Department did not include the use of clinical and field preceptors at BLS training institutes?

**31. Section 1013.3. Special event EMS personnel and capability requirements—Need and Clarity**

One commentator expressed a need to coordinate Chapter 1013 Special Event EMS with other Commonwealth of Pennsylvania documents including the "Commonwealth Emergency Operations Plan," the "Special Event Emergency Action Plan Guide" and the "Planning Guidance for Mass Fatalities Incidents." The Department should explain how it intends to coordinate the requirements in this regulation with other Commonwealth of Pennsylvania documents. Where the Department's requirements vary from other Commonwealth of Pennsylvania documents, the Department should explain the need to vary.

**32. Section 1013.8. Special event report—Need**

Section 1013.8 requires the person or organization who filed a special event EMS plan to also file a special event report. The Department should explain the need for this report. The Department should also consider requiring a report only if EMS services were needed at the event.

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 99-726. Filed for public inspection April 30, 1999, 9:00 a.m.]

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## INSURANCE DEPARTMENT

### Agency Contract Termination of Jerry D. Dunlap Insurance Agency under Act 143; Prudential Property and Casualty Insurance Company; Doc. No. AT99-04-019

A pre-review telephone conference initiated by the Administrative Hearings Office shall be conducted on May 20, 1999, at 10 a.m. A date for the review shall be determined, if necessary, at the pre-review telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed on or before May 6, 1999, with the Docket Clerk, Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102.

Answers to petitions to intervene, if any, shall be filed on or before May 13, 1999.

The parties are advised that under 40 P. S. § 24 any information or documents exchanged under this order are absolutely privileged and may not be disclosed to any outside party. Failure to maintain the confidentiality of such information or documents may result in enforcement action or other civil penalty.

The agency contract at issue shall remain in force and effect pending the issuance of a Decision in this matter.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-727. Filed for public inspection April 30, 1999, 9:00 a.m.]

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### Alleged Violation of Insurance Laws

*Emanuel L. Sarris, Sr.; Doc. No. SC99-04-016*

Notice is given of the Order to Show Cause issued on April 16, 1999, by the Deputy Insurance Commissioner of the Commonwealth of Pennsylvania in the above-referenced matter. Violation of the following is alleged: The Insurance Department Act of 1921, P. L. 789, as amended, 40 P. S. §§ 234(a) and 279 and 31 Pa. Code §§ 37.46(5), 37.47 and 37.48.

Respondent shall file a written answer to the Order to Show Cause within 30 days of the date of issue. If respondent files a timely answer, a formal administrative hearing shall be held in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative

Agency Law); General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1—35.251; Special Rules of Administrative Practice and Procedure, 31 Pa. Code §§ 56.1—56.3 and other relevant procedural provisions of law.

Answers, motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed in writing with the Docket Clerk, Insurance Department, Administrative Hearings Office, 901 North 7th Street, Harrisburg, PA 17102.

Persons with a disability who wish to attend the above-referenced administrative hearing, and require an auxiliary aid, service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency ADA Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-728. Filed for public inspection April 30, 1999, 9:00 a.m.]

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### Insurance Services Office, Inc.; Homeowners Rate Filing

On April 19, 1999, the Insurance Department received from Insurance Services Office, Inc. a filing for a proposed loss cost level change for homeowners insurance.

The rating organization requests an overall 9.5% decrease to be effective September 1, 1999.

Unless formal administrative action is taken prior to June 18, 1999, the subject filing may be deemed approved by operation of law.

Copies of the filing will be available for public inspection, by appointment, during normal working hours at the Insurance Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections to Xiaofeng Lu, Insurance Department, Bureau of Regulation of Rates and Policies, Room 1311, Strawberry Square, Harrisburg, PA 17120, (E-mail: xlu@ins.state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-729. Filed for public inspection April 30, 1999, 9:00 a.m.]

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### Insurance Services Office, Inc.; Personal Auto Advisory Prospective Loss Cost Revision; Rate Filing

On April 19, 1999, the Insurance Department received from Insurance Services Office, Inc. a loss cost level change for private passenger automobile insurance.

The rating organization requests an overall 10.6% decrease to be effective October 1, 1999.

Unless formal administrative action is taken prior to June 18, 1999, the subject filing may be deemed approved by operation of law.

Copies of the filing will be available for public inspection, by appointment, during normal working hours at the Insurance Department's offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections to Michael W. Burkett, Insurance Department, Bureau of Regulation of Rates and Policies, Room 1311, Strawberry Square, Harrisburg, PA 17120 (e-mail at mburkett@ins.state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-730. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing, as authorized by the act of June 17, 1998 (P. L. 464, No. 68) in connection with their company's termination of the insured's automobile policies. The hearings will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). All administrative hearings are held in the Insurance Department Offices in Harrisburg, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearings will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Gary M. de Berry; file no. 99-303-70526; Erie Insurance Exchange; doc. no. PI99-04-013; May 18, 1999, at 11 a.m.;

Appeal of Sherri and Stanley Jerominski; file no. 99-181-01564; Nationwide Mutual Insurance Co.; doc. no. P99-04-014; May 19, 1999, at 1 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses and the like necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Commissioner may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is

required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearings, and require an auxiliary aid, service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-731. Filed for public inspection April 30, 1999, 9:00 a.m.]

### Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their company's termination of the insured's policies. All administrative hearings are held in the Insurance Department Offices in Harrisburg, PA. Failure by the appellant to appear at the scheduled hearing may result in dismissal with prejudice.

The hearing will be held in the Capitol Associates Building, 901 North Seventh Street, Second Floor Hearing Room, Harrisburg, PA 17102.

Appeal of Milivoj Marinkovic; file no. 99-303-70573; Insurance Placement Facility of PA; doc. no. PI99-04-017; May 25, 1999, at 1 p.m.

Both parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The representative of the company must bring relevant claims files and other necessary evidence. The insured must bring all documents, photographs, drawings, witnesses and the like necessary to substantiate the case. The hearing will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law); section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) and the regulations set forth at 31 Pa. Code § 59.7(e) (relating to appeal procedures). Under 31 Pa. Code § 59.7(e)(5), procedural matters will be in conformance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) unless specific exemption is given.

After the hearing, the Insurance Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The order of the Commissioner is subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the above-referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 99-732. Filed for public inspection April 30, 1999, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The following Liquor Control Board leases will expire:

Allegheny County, Cost Center # 8314, Investigations—Pittsburgh, Three Parkway Center, 875 Greentree Rd., Suite 108, Pittsburgh, PA 15220-0807.

*Lease Expiration Date:* September 30, 2000

Lease office space for the Licensing Division of the PA Liquor Control Board. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,200 to 1,500 net useable square feet of new or existing office space within 1 mile of the intersection of Route 22 and 48 in Monroeville. Adequate free parking must be available.

*Proposals due:* May 21, 1999 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222  
**Contact:** Joseph Molhoek, (412) 565-5130

Northumberland County, Wine & Spirits Shoppe # 4903, 602 Market Street, Sunbury, PA 17801-2340.

*Lease Expiration Date:* August 31, 2000

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 2,400 to 3,000 net useable square feet of new or existing retail commercial space within the City of Sunbury.

*Proposals due:* May 21, 1999 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Ronald Hancher, (717) 657-4228

Sullivan County, Wine & Spirits Shoppe # 5701, 121 W. Main Street, Dushore, PA 18614-0301.

*Lease Expiration Date:* May 31, 2000

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,450 to 2,500 net useable square feet of new or existing retail commercial space within the Borough of Dushore.

*Proposals due:* May 21, 1999 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Ronald Hancher, (717) 657-4228

Lycoming County, Wine & Spirits Shoppe # 4108, 78 N. Main Street, Hughesville, PA 17737-1506.

*Lease Expiration Date:* May 31, 2000

Lease retail commercial space to the Commonwealth of Pennsylvania. Proposals are invited to provide the Pennsylvania Liquor Control Board with approximately 1,600 to 2,400 net useable square feet of new or existing retail commercial space within the Borough of Hughesville.

*Proposals due:* May 21, 1999 at 12 noon

**Department:** Pennsylvania Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Ronald Hancher, (717) 657-4228

JOHN E. JONES, III,  
*Chairperson*

[Pa.B. Doc. No. 99-733. Filed for public inspection April 30, 1999, 9:00 a.m.]

## MILK MARKETING BOARD

### Notice of Hearing and Presubmission Schedule; All Milk Marketing Areas

Notice is hereby given under the provisions of the Milk Marketing Law (31 P. S. §§ 700j-101—700k-10.1), that the Milk Marketing Board (Board) will conduct a public hearing for all milk marketing areas on June 2, 1999, commencing at 9 a.m. in Room 202 of the Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

#### *Purposes of the hearing*

The hearing has two purposes: (1) To receive evidence concerning adjusting the resale price structure in connection with Federal order consolidation; and (2) To receive evidence concerning current standards for butterfat ranges found on the Board's price sheets and in official general orders for the various milk marketing areas, as compared with standards issued by the United States Department of Agriculture.

#### *Entries of appearance*

The staff of the Board is deemed to be a party to this hearing and their attorneys are deemed to have entered their appearances. Other persons that may be affected by the Board order addressing the purposes of the hearing may be included on the Board's list of parties by:

1. Having their counsel file with the Board, on or before May 7, 1999, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25, which shall identify by name and address the party on whose behalf the appearance is made. Thereafter documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21, filing with the Board, on or before May 7, 1999, an address to which documents and other written communications required to be served upon them or furnished to them may be sent.

#### *Witnesses, exhibits, presentation of evidence*

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. On or before May 21, 1999, each party shall file with the Board seven copies and serve on all other parties one copy of:

a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. On or before May 28, 1999, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board, or who wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code §§ 35.164, 35.165, 35.167 or 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

#### *Requests for data from Board staff*

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office on or before May 14, 1999.

#### *Board's filing address*

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

If individuals require this information in an alternative format, call (717) 787-4194 or (800) 654-5984 (PA Relay Service for TDD Users).

LYNDA J. BOWMAN,  
*Secretary*

[Pa.B. Doc. No. 99-734. Filed for public inspection April 30, 1999, 9:00 a.m.]

### **Notice of Hearing and Presubmission Schedule; Milk Marketing Area No. 6**

Notice is hereby given under the provisions of the Milk Marketing Law (31 P.S. §§ 700j-101—700k-10.1), that the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 6 on July 7, 1999, commencing at 9 a.m. in Room 202 of the Agriculture Building, 2301 North Cameron Street, Harrisburg, PA. If necessary, the hearing will be continued on July 8.

#### *Purpose and scope of the hearing*

The purpose of the hearing is to receive evidence concerning minimum prices milk dealers shall pay to producers for various classes of milk; minimum prices milk dealers shall charge for milk, including prices to be charged to wholesale customers such as stores, restaurants and institutions; discounts; and minimum prices to be charged to consumers for milk sold for consumption off the premises. Evidence will also be received concerning the various types, classifications and containers of fluid milk and milk products; in-store handling costs; reasonable profit margins for milk dealers and stores; and adoption of a cost replacement system, including whether in-store handling costs should be part of that system.

#### *Entries of appearance*

The Area 6 Milk Dealers Association, which petitioned for the hearing, is deemed to be a party, as is the staff of the Board, and their attorneys are deemed to have entered their appearances. Other persons that may be affected by the Board order fixing prices in Area No. 6 may be included on the Board's list of parties by:

1. Having their counsel file with the Board, on or before May 10, 1999, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25, which shall identify by name and address the party on whose behalf the appearance is made. Thereafter documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21, filing with the Board, on or before May 10, 1999, an address to which documents and other written communications required to be served upon them or furnished to them may be sent.

#### *Witnesses, exhibits, presentation of evidence*

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. On or before June 25, 1999, each party shall file with the Board seven copies and serve on all other parties one copy of:

a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. On or before July 2, 1999, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board, or who wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code §§ 35.164, 35.165, 35.167 or 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

#### *Requests for data from Board staff*

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office on or before May 14, 1999.

#### *Board's filing address*

The filing address for the Board is Pennsylvania Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

If individuals require this information in an alternate format, call (717) 787-4194 or (800) 654-5984 (PA Relay Service for TDD Users).

LYNDA J. BOWMAN,  
*Secretary*

[Pa.B. Doc. No. 99-735. Filed for public inspection April 30, 1999, 9:00 a.m.]

## PENNSYLVANIA COMMISSION FOR WOMEN

### Hearing Notice

The Pennsylvania Commission for Women (Commission) will hold a childcare hearing in Harrisburg on Thursday, May 13, 1999, at 9:30 a.m. in Room 8-EB of the East Wing Rotunda, Capitol Building.

The Commission will be working with the Pennsylvania Bar Association's Commission on Women in the Profession, and hopes to foster an informed public discussion on childcare issues that will contribute to the formulation of creative solutions to many childcare problems.

The Commission is soliciting the views of parents, childcare providers, legislators, policy makers, business owners, law enforcement officials and any other individuals interested in enhancing childcare services throughout the State. Persons who need accommodations due to a disability and want to arrange to attend should contact Christine Anderson, Pennsylvania Commission for Women, 205 Finance Building, Harrisburg, PA 17120 at (717) 787-8128, at least 24 hours in advance so arrangements can be made.

LOIDA ESBRI,  
*Executive Director*

[Pa.B. Doc. No. 99-678. Filed for public inspection April 23, 1999, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before May 24, 1999, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protest shall also indicate whether it applies to the temporary authority application or the permanent application or both.

**Applications of the following for approval of the beginning of the exercise of the right and privilege of operating as common carriers for transportation of persons as described under each application.**

**A-00115806. Hose Co. No. 6, Kittanning** (P. O. Box 462, Kittanning, Armstrong County, PA 16201), a corporation of the Commonwealth of Pennsylvania—persons in paratransit service, between points in the borough of Kittanning, Armstrong County, and within an airline distance of 60 statute miles of the limits thereof, and from points in said territory to points in Pennsylvania, and vice versa.

**Applications of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under each application.**

**A-00112415, Folder 3. Armando Ocando, t/d/b/a All Star Limousines** (2307 Harrow Road, Pittsburgh, Allegheny County, PA 15241)—additional right—persons in group and party service, between points in the counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Somerset, Washington and Westmoreland, and from points in said counties, to points in Pennsylvania, and return; subject to the following condition: that the service be limited to the transportation of persons attending weddings, proms, concerts, school dances, sports events and nights-on-the-town.

**Applications of the following for amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for transportation of persons as described under each application.**

**A-00108826, Folder 1, Am-A. System of Services, Inc., t/d/b/a SOS Taxi** (28 Georgetown Lane, Beaver, Beaver County, PA 15009), a corporation of the Commonwealth of Pennsylvania—persons upon call or demand in the county of Beaver: *so as to permit* the transportation of persons upon call or demand in the boroughs of Leetsdale, Edgeworth, Sewickley, Sewickley Heights and Bell Acres; and the township of Leet, all located in Allegheny County.

**Applications of the following for approval amendment of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under each application.**

**A-00111425, F. 2, Am-B. Daniel R. Koebler, t/d/b/a Crown Limousine Service** (701 East Main Street, Grove City, Mercer County, PA 16127)—inter alia, persons in limousine service, between points in the townships of Liberty, Pine and Wolf Creek, and the borough of Grove City, Mercer County, and from points in said townships and borough, to points in Pennsylvania: *so as to permit* the transportation of persons in limousine service between points in county of Butler, and from points in the said county, to points in Pennsylvania, and return; which is to be a transfer of all of the operating rights of Deanna Kyle, t/d/b/a Classic Transportation, under the certificate issued at A-00114366, subject to the same limitations and conditions.

**Application of the following for amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for the transportation of household goods by transfer of rights as described under each application.**

**A-00110867, F. 1, Am-A. James Moving Company, Inc.** (1709 Beryl Drive, Pittsburgh, Allegheny County, PA 15227), a corporation of the Commonwealth of Pennsylvania—household goods in use between points in the borough of Sewickley, Allegheny County, and within 25 miles by the usually traveled highways of the limits of said

borough: *So as to permit* (1) the transportation of household goods in use from points in the city of McKeesport, Allegheny County, and within a radius of 3 miles thereof, to points within 25 miles by the usually traveled highways of the limits of said city, and vice versa, and (2) from points in the borough of Homestead, Allegheny County, and within 5 miles by the usually traveled highways of the limits of said borough, to other points in Pennsylvania, and vice versa; which is to be a transfer of the rights authorized Elizabeth Fawcett, t/d/b/a Boaz Trucking and Biddlestone Transfer, under the certificate issued at A-00102008, F. 2, subject to the same limitations and conditions. *Attorney:* John A. Pillar, 1106 Frick Building, Pittsburgh, PA 15219.

**Applications of the following for approval of the beginning of the exercise of the right and privilege of operating motor of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under each application.**

**A-00115801. Prince Limousine, Inc.** (1905 Lafayette Road, Gladwyne, Montgomery County, PA 19035), a corporation of the Commonwealth of Pennsylvania—persons in limousine service, between points in the city and county of Philadelphia, and from points in said city and county, to points in Pennsylvania, and return; which is to be a transfer of all of the right authorized under the certificate issued at A-00110623, to ABC Limo, Inc., subject to the same limitations and conditions. *Attorney:* John J. Gallagher, P.C., Suite 1100, 1760 Market Street, Philadelphia, PA 19103.

**A-00115798. Welco Transportation, Inc., t/d/b/a Adventure Limousine** (320 South Roberts Road, P. O. Box 635, Dunkirk, Chautauqua County, New York 14048), a corporation of the State of New York—persons in limousine service, between points in McKean County, and from points in said county, to points in Pennsylvania, and return; which is to be a transfer of all of the right authorized under the certificate issued at A-00111571, to Brian Joseph Vecellio, t/d/b/a First Class Limousine, subject to the same limitations and conditions.

**Application of the following for the approval of the transfer of stock as described under each application.**

**A-00110198, F. 5000. Mid-County Transportation Services Inc.** (32 Blaine Street, Lansdale, Montgomery County, PA 19446), a corporation of the Commonwealth of Pennsylvania—for the approval of the transfer of 100 shares of issued and outstanding shares of stock held by the estate of Shirley Ann Reese, deceased by James Reese, Jr., Executor, to Norristown Transportation Company, Inc. William R. Wanger, 1250 South Broad Street, Lansdale, PA 19446.

**Applications of the following for approval of the right to begin to operate as a broker for the transportation of persons as described under each application.**

**A-00115797. Lorna A. Gimble, t/d/b/a Daybreak Tours & Charters** (17 Oak Street, Wilkes-Barre, Luzerne County, PA 18702)—brokerage license—to arrange for the transportation of persons and their baggage, between points in Pennsylvania.

**Application of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of household goods by transfer as described under each application.**

**A-00115810. Neil E. Haylett, t/d/b/a Haylett Storage & Services** (338 Grant Street, Franklin, Venango County, PA 16323)—household goods in use from points in the county of Venango, to other points in Pennsylvania, and vice versa; which is to be a transfer of part of the rights authorized Engles Trucking Service, Inc., (formerly Timothy R. Engles, t/d/b/a Engles Family Moving), under the certificate issued at A-00109827, subject to the same limitations and conditions.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 99-736. Filed for public inspection April 30, 1999, 9:00 a.m.]

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### Water Service Without Hearing

**A-212285F0061. Pennsylvania-American Water Company.** Application of Pennsylvania-American Water Company for approval of the right to offer, render, furnish or supply public water service in the nature of public fire service, to a portion of Skippack Township, Montgomery County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before May 17, 1999, under 52 Pa. Code (relating to public utilities).

*Applicant:* Pennsylvania-American Water Company.

*Through and By Counsel:* Velma A. Redmond, Esquire, Susan D. Simms, Esquire, 800 West Hersheypark Drive, Hershey, PA 17033.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 99-737. Filed for public inspection April 30, 1999, 9:00 a.m.]

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### Water Service Without Hearing

**A-210085. Roaring Brook Estates Water Co., Inc.** Application of Roaring Brook Estates Water Co., Inc., for approval of the right to offer, render, furnish or supply new water service to the public in Roaring Brook Township, Lackawanna County, PA.

This application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before May 17, 1999, under 52 Pa. Code (relating to public utilities).

*Applicant:* Roaring Brook Estates Water Co., Inc.

*Through and By Counsel:* Carlos Martin, President, Roaring Brook Estates Water Co., Inc., 108 Donny Drive, Moscow PA 18444.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 99-738. Filed for public inspection April 30, 1999, 9:00 a.m.]

**Water Service  
Without Hearing**

**A-210390F5000, A-210013F0012, and A-210390F2000. United Waterworks, Inc., United Water Pennsylvania, Inc. and Center Square Water Company.** Joint Application of United Waterworks, Inc. United Water Pennsylvania, Inc., and Center Square Water Company for all approvals required under the Public Utility Code for (1) the transfer, by sale, from Diane Ross to United Waterworks, Inc., of all the issued and outstanding shares of capital stock of Center Square Water Company, and the merger of Center Square Water Company with and into United Water Pennsylvania, Inc., docketed at A-210390F5000; and (2) the right of United Water Pennsylvania, Inc., to begin to offer or furnish water service in additional portions of Upper Allen and Monroe Townships, Cumberland County, and portions of Carroll Township, Cumberland County, PA, docketed at A-210013F0012; and (3) the abandonment by Center Square Water Company of all water service to the public, docketed at A-210390F2000.

This joint application may be considered without a hearing. Protests or petitions to intervene can be filed with the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant on or before May 17, 1999, under 52 Pa. Code (relating to public utilities).

*Applicants:* United Waterworks, Inc., United Pennsylvania, Inc.

*Through and By Counsel:* John J. Gallagher, Esquire, LeBoeuf, Lamb, Greene & MacRae L.L.P., P. O. Box 12105, Harrisburg, PA 17108-2105 and Center Square Water Company.

*Through and By Counsel:* Robert Spitzer, Esquire, P. O. Box 12087, Harrisburg, PA 17108-2087.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 99-739. Filed for public inspection April 30, 1999, 9:00 a.m.]

## STATE BOARD OF NURSING

**Commonwealth of Pennsylvania v. Sally Jones  
Epps, R.N.**

*Notice to Sally Jones Epps, R.N.*

By order of the State Board of Nursing, under 1 Pa. Code § 33.31, Pa.R.C.P. No. 430, Sally Jones Epps, R.N., is hereby given notice as follows:

On July 31, 1998, the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs, instituted against you, with respect to your license to practice professional nursing, as a registered nurse, a formal administrative disciplinary action before the State Board of Nursing upon the filing and issuance of an order to show cause alleging that you have violated certain provisions of the professional nursing law. A copy of the order to show cause at Docket No. 0507-51-98, File No. 98-51-02714 is on file with and available through the prothonotary at the address indicated as follows. Read this

document carefully. You may lose licenses, certificates, registrations or permits which may be important to your practice of your profession, trade or occupation. Also you may be subject to the levying of civil penalties of up to \$1,000 per violation.

If you wish to defend against the allegations in this order to show cause, or to present evidence on your behalf in mitigation of any penalties which may be imposed upon you or your license, certification, registration, permit or other authorization to practice your profession, the procedures for doing so are set forth in the order to show cause. All proceedings are conducted in accordance with the Administrative Agency Law and the General Rules of Administrative Practice and Procedure. You have the right to be represented by an attorney in this matter. Although you may represent yourself, you are advised to seek the advice of an attorney. If you do not have an attorney or cannot afford one, contact the office set forth as follows to find out where you can get legal help:

Lawyer Referral Service  
Dauphin County Bar Association  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

You are directed to respond by filing an answer in writing within 30 days of the date of the order to show cause. An original and three copies must be submitted. Also, you must send a separate copy of the answer, and any other pleadings or documents, to the prosecuting attorney named in this document. If you do not file an answer, disciplinary action may be taken against you without a hearing.

Answers and any other pleadings should be filed with and questions and any other inquiries should be directed to: Deanna S. Walton, Prothonotary, Bureau of Professional and Occupational Affairs, 124 Pine Street, Suite 200, Harrisburg, PA 17101.

CHRISTINE ALICHNIE, Ph.D., R.N.,  
*Chairperson*

[Pa.B. Doc. No. 99-740. Filed for public inspection April 30, 1999, 9:00 a.m.]

## STATE EMPLOYEES' RETIREMENT BOARD

### Hearings Scheduled

Hearings have been scheduled, as authorized by 71 Pa.C.S. Part XXV (relating to State Employees' Retirement Code), in connection with the State Employees' Retirement System's denial of claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the State Employees' Retirement System, 30 North Third Street, Fifth Floor, Harrisburg, PA 17108:

May 3, 1999	Tamara Willingham (Disability Benefits)	1:30 p.m.
May 12, 1999	Lorrie L. Sifter	1 p.m.



NOTICES

2355

May 3, 1999 Tamara Willingham  
(Purchase Service Credit  
w/Kutztown University) 1:30 p.m.

May 17, 1999 Roslyn V. Harris  
(Disability Benefits) 1:30 p.m.

May 26, 1999 Jack T. Polk  
(Purchase Service Credit  
w/Shippensburg University) 1 p.m.

June 2, 1999 George Titler (dec'd)  
(Death Benefit) 1 p.m.

June 23, 1999 K. Lee Derr  
(Purchase Service Credit  
w/Penn State University) 1 p.m.

Sept. 1, 1999 Gloria D. Briggs  
(Change Effective Date Of  
Retirement) 1 p.m.

Sept. 8, 1999 Richard Welsh (dec'd)  
(Change Member's Option) 1 p.m.

Sept. 22, 1999 Francis J. Hudak 1 p.m.

May 3, 1999 Tamara Willingham  
(Purchase Service Credit  
w/Penn State University) 1:30 p.m.

Sept. 29, 1999 Frances Owczarz (dec'd)  
(Contesting Designation of  
Beneficiary) 1 p.m.

Oct. 6, 1999 Della M. Marsh  
(Multiple Service) 1 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 4 Pa. Code § 250.01 (relating to applicability of general rules), procedural matters will be in conformance with the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II unless specific exemption is granted.

JOHN BROSIUS,  
*Secretary*

[Pa.B. Doc. No. 99-741. Filed for public inspection April 30, 1999, 9:00 a.m.]

# STATE CONTRACTS INFORMATION

## DEPARTMENT OF GENERAL SERVICES

Notices of invitations for bids and requests for proposals on State contracts for services and commodities for which the bid amount is reasonably expected to be over \$10,000, are published in the State Contracts Information Section of the *Pennsylvania Bulletin* prior to bid opening date. Information in this publication is intended only as notification to its subscribers of available bidding and contracting opportunities, and is furnished through the Department of General Services, Vendor Information and Support Division. No action can be taken by any subscriber or any other person, and the Commonwealth of Pennsylvania is not liable to any subscriber or any other person, for any damages or any other costs incurred in connection with the utilization of, or any other reliance upon, any information in the State Contracts Information Section of the *Pennsylvania Bulletin*. Interested persons are encouraged to call the contact telephone number listed for the particular solicitation for current, more detailed information.

**EFFECTIVE JULY 1, 1985, A VENDOR'S FEDERAL IDENTIFICATION NUMBER (NUMBER ASSIGNED WHEN FILING INCOME TAX DOCUMENTS) OR SOCIAL SECURITY NUMBER IF VENDOR IS AN INDIVIDUAL, MUST BE ON ALL CONTRACTS, DOCUMENTS AND INVOICES SUBMITTED TO THE COMMONWEALTH.**

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". A qualified small business concern is an independently owned, operated for profit, business employing 100 or fewer employes and is not a subsidiary or affiliate of a corporation otherwise not qualified.

Such penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter. The small business concern must include on every invoice submitted to the Commonwealth: "(name of vendor) is a qualified small business concern as defined at 4 Pa. Code § 2.32".

For information on the required payment date and annual interest rate, please call the Pennsylvania Department of Commerce, Small Business Action Center, 483 Forum Building, 783-5700.

### Reader's Guide

- ① Service Code Identification Number
- ② Commodity/Supply or Contract Identification No.

**B-54137.** Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services  
 Location: Harrisburg, Pa.  
 Duration: 12/1/93-12/30/93  
 Contact: Procurement Division  
 787-0000

③ Contract Information

④ Department

⑦

⑤ Location

(For Commodities: Contact:)  
 Vendor Services Section  
 717-787-2199 or 717-787-4705

⑥ Duration

### REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

## GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. Our efforts focus on guiding the business community through the maze of state government offices. The bureau is, by law, the central repository for all state contracts over \$5,000. Bureau personnel can supply descriptions of contracts, names of previous bidders, pricing breakdowns and other information to help you submit a successful bid on a contract. We will direct you to the appropriate person and agency looking for your product or service to get you "A Step Ahead." Services are free except the cost of photocopying contracts or dubbing a computer diskette with a list of current contracts on the database. A free brochure, "Frequently Asked Questions About State Contracts," explains how to take advantage of the bureau's services.

Contact: **Bureau of Contracts and Public Records**  
 Pennsylvania State Treasury  
 Room G13 Finance Building  
 Harrisburg, PA 17120  
 717-787-2990  
 1-800-252-4700

BARBARA HAFER,  
*State Treasurer*

**Online Subscriptions At <http://www.statecontracts.com> 1-800-334-1429 x340**

### Commodities

**1690388** Construction and building materials—1 each provide all labor, material, supervision and all items necessary to furnish and install chain link fence and accessories.

**Department:** Conservation and Natural Resources  
**Location:** Elverson, Chester County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**8171550** Construction and building materials—1 each precast reinforced concrete box culvert.

**Department:** Transportation  
**Location:** Meadville, Crawford County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**8171570** Construction and building materials—1 each precast reinforced concrete box culvert.

**Department:** Transportation  
**Location:** Meadville, Crawford County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**1723158** Construction, mining, excavating and highway maintenance equipment—1 each rider sweeper scrubber LP power/liquid cooled.

**Department:** General Services  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**7314220** Containers, packaging and packing supplies—1,200 each holders, black plastic wine bottle insert, size 8 1/4" D x 18 1/2" H x 43 1/2" W, 5-cell units.

**Department:** Liquor Control Board  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**8217670** Laboratory instruments and equipment—1 each scanning electron microscope; 1 each 1st year full service maintenance beyond warranty period; 1 each 2nd year full service maintenance beyond warranty period; 1 each 3rd year full service maintenance beyond warranty period; 1 each 4th year full service maintenance beyond warranty period.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**1677138** Materials handling equipment—5 each Golvo 7007ES patient lift or approved equal.

**Department:** Military and Veterans Affairs  
**Location:** Hollidaysburg Veterans Home, Hollidaysburg, Blair County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**1663218** Motor vehicles, trailers and cycles—1 each latest model converted omnibus.

**Department:** Public Welfare  
**Location:** Harrisburg State Hospital, Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**8250020** Motor vehicles, trailers and cycles—25 each van, video logging and works station.

**Department:** Transportation  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**1718188** Paper and printing—3000M No. 10 double window envelope; 1500M No. 10 double window envelope.

**Department:** Revenue  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**1589218** Plumbing, heating and sanitation equipment—47 feet of conveyor housing, gate valves, portholes, anti-abrasive bottom plate and rail to be included.

**Department:** Public Welfare  
**Location:** Polk Center, Polk, Venango County, PA  
**Duration:** FY 98—99  
**Contact:** Vendor Services, fax request to (717) 787-0725 or call (717) 787-2199

**4674** Communication equipment—Provide Cardeff Teleform v.6.0 Elite Enterprise Edition software with designer, reader, and verifier modules for Windows NT, 1-year maintenance, installation and configuration, 3 days onsite training.

**Department:** Environmental Protection  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Environmental Protection, Ally Hubler, (717) 787-2471

**0813** Construction and building materials—Pennsbury Manor requires 1,500 11-foot fence rails, split not sawn, black locust only (no other wood acceptable). For complete specifications call Charlie Thomforde at Pennsbury Manor (215) 946-0400.

**Department:** Historical and Museum Commission  
**Location:** Morrisville, Bucks County, PA  
**Duration:** FY 98—99  
**Contact:** Historical and Museum Commission, Charlie Thomforde, (215) 946-0400

**98-CI 015** Construction and building materials—Plywood—various sizes ad types to include: oriented standard board, wafer board, CDX sheeting, tongue and groove and southern pine in full lifts.

**Department:** Corrections  
**Location:** Bellefonte, Centre County, PA  
**Duration:** FY 98—99  
**Contact:** State Correctional Institution Rockview, MaryAnn Ulrich, (717) 731-7134; fax (717) 731-7008

**N-1299** Construction and building materials—Material only: CDX plywood 1/2" x 4' x 8', 680 sheets. Call the YDC New Castle purchasing department for a bid package.

**Department:** Public Welfare  
**Location:** Youth Development Center, New Castle, Lawrence County, PA  
**Duration:** FY 98—99  
**Contact:** YDC New Castle, T. E. Mateja, (724) 656-7310

**N-1199** Construction and building materials—Material only: 25 year shingle. Color: gray. Quantity required 680 square. Call the YDC New Castle purchasing department for a bid package. (724) 656-7310/7308.

**Department:** Public Welfare  
**Location:** Youth Development Center, New Castle, Lawrence County, PA  
**Duration:** FY 98—99  
**Contact:** YDC New Castle, T. E. Mateja, (724) 656-7310

**031** Communication equipment—To furnish miscellaneous equipment, cables and connectors manufactured by Extron Electronics as part of the Emergency Operations Center renovation project.

**Department:** PEMA  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** PEMA, Christopher Nolan, (717) 651-2191

**PSU 5278-g** Communication equipment—16 forward optical receiver, chassis, power supply and line extender.

**Department:** Penn State University  
**Location:** University Park, Centre County, PA  
**Duration:** FY 98—99  
**Contact:** Penn State University, Steve Blazer, (814) 865-1402; fax (814) 865-3028

**FL No. 018** Miscellaneous—Daily Number/Bid 4 ping pong ball sets (10 balls per set). Total of 54 sets; Cash 5/Super 6 Lotto ping pong ball sets (69 balls per set). Total of 15 sets. Specifications, delivery instructions and any other pertinent information will be included in the invitation to bid package.

**Department:** Revenue  
**Location:** Middletown, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Revenue/PA Lottery, Jim Frye, (717) 986-4736

**SO-181** Construction and building materials—The State Correctional Institution at Somerset will be soliciting bids for various fencing materials.

**Department:** Corrections  
**Location:** Somerset, Somerset County, PA  
**Duration:** FY 98—99  
**Contact:** State Correctional Institution Somerset, Theresa Solarczyk, (814) 443-8100, ext. 311

**SO-180** Communication equipment—The State Correctional Institution at Somerset will be soliciting bids for a time and attendance system.

**Department:** Corrections  
**Location:** Somerset, Somerset County, PA  
**Duration:** FY 98—99  
**Contact:** State Correctional Institution Somerset, Theresa Solarczyk, (814) 443-8100, ext. 311

**800-98** Construction and building materials—Furnish and install six each: hollow metal doors; masonry frames, full mortise continuous hinges, door closers, store door function mortise locks and kickplates.

**Department:** Public Welfare  
**Location:** Norristown State Hospital, Norristown, Montgomery County, PA  
**Duration:** FY 98—99  
**Contact:** Norristown State Hospital, Sue Brown, (610) 313-1026

**015** Photographic equipment—Matthews Studio Equipment. Includes (1) doorway dolly (No. 395100); (2) stainless steel track (8 ft.) (No. 397065); (1) stainless steel track (4 ft.) (No. 397070); (2) curved stainless steel track (8 ft.) (No. 397059); (1) starter track (No. 397054); (1) hot buttons (track wheels) set of four (No. 395011); (1) mini jib II (No. 516000); (1) Tripod MT1 (No. 812170); (1) tie down strap (No. 735156).

**Department:** Commonwealth Media Service  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Commonwealth Media Services, Dennis Brown, (717) 787-9823

**015-A** Communication equipment—(4) Shure compact portable stereo audio mixers, Model FP33; (1) Sennheiser shotgun microphones, Model MKH 70-P48 matte black. Windscreen combination including (1) MZW 70-1 basket windshield; (1) MZS 20-1 shock mount for MZH 70-1; (1) MZA 14P 48U Phantom power supply; (1) MZN 70-1 Hairy covers; (2) Sennheiser shotgun microphones, Model MKH 60. Windscreen combination including (2) MZW 60 vasket windshield; (2) MZS 20-1 shock mount for MZW 60-1; (2) MZA 14P 48U Phantom power supply; (2) MZN 16P 48U A/C Phantom power supply; (2) MZH 60-1 Hairy covers. (1) Sennheiser Back-electret microphone capsule, Model ME 62. (1) Sennheiser powering module, Model K6. (1) Chrystal partners—Big Ears parabolic reflector kit (smoke color) Model BE3K. Includes carry case, electric site, neck strap, gloves, handle and Y1R yoke. Option (1) Y2R—Lavalier microphone yoke assembly. (3) Beyer dynamic carbon mic pole (10.5 ft.) Denon—3 head audio cassette deck (1), Model DN790R.

**Department:** Commonwealth Media Services  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** Commonwealth Media Services, Dennis Brown, (717) 787-9823

**030** Communication equipment—Large format, high resolution publication scanning system consisting of a Minolta PS7000 or equivalent; a Minolta PS7000 PC interface kit or equivalent; a Minolta PS7000 printer interface kit or equivalent and a Minolta MSP 3000 printer or equivalent. This bid will not be awarded on a line item basis.

**Department:** Historical and Museum Commission  
**Location:** Harrisburg, Dauphin County, PA  
**Duration:** FY 98—99  
**Contact:** PA Historical and Museum Commission, Harry F. Parker, (717) 783-9873

## SERVICES

### Audio/Video—04

**99045** Cell phones—Service will be required for nine cellular telephones. Contract will also allow for the addition or deletion of airtime and maintenance service. More detailed information may be obtained from the institution.

**Department:** Corrections  
**Location:** State Correctional Institution Chester, 500 East 4th Street, Chester, Delaware County, PA 19013  
**Duration:** July 1, 1999—June 30, 2001  
**Contact:** Jacqueline Newson, Purchasing Agent, (610) 490-4370

**SC159872** Millersville University is soliciting qualified bidders who can provide the University with fiber optic cabling and network integration services for the Nursing Wing of Roddy Science Center addition. The project is to be completed between July 19, 1999 and August 9, 1999. Winning bidder will be required to complete the standard blueback contract and contract bond. Interested vendors should fax their requests to be placed on a bidders list to Anna Stauffer, (717) 871-2000 no later than 2 p.m., Friday, May 7, 1999.

**Department:** State System of Higher Education  
**Location:** Millersville University, Millersville, PA 17551  
**Duration:** July 19, 1999—August 9, 1999  
**Contact:** Anna Stauffer, (717) 872-3041

### Barber/Cosmetology—05

**08819901** To provide hair cuts for the youths of the Loysville Youth Development Center and the Loysville Secure Treatment Unit, R. D. 2, Box 365B, Loysville, PA 17047.

**Department:** Public Welfare  
**Location:** Loysville Complex, Youth Development Center, R. D. 2, Box 365B, Loysville, PA 17047  
**Duration:** Anticipated start date of July 1, 1999 to June 30, 2000  
**Contact:** Mary Lou Auman, Purchasing Agent, (717) 789-5508

**Computer Related Services—08**

**98-CN23** Contractor to supply transit central software (1 server and 10 workstations), (1 server and 10 workstations support/maintenance). Complete details and specifications may be obtained by contacting the Procurement Office.

**Department:** Public Welfare  
**Location:** OIM/BPS, Room 220 Willow Oak Building, Harrisburg State Hospital, Harrisburg, PA 17105  
**Duration:** Delivery date as soon as possible  
**Contact:** Doyle Shull, (717) 787-7585

**Construction and Construction Maintenance—09**

**097398-05** Contractor shall furnish all labor, tools, equipment, building materials, and the like, to complete the preparation of road areas and the bituminous paving of road areas as indicated on site plan.

**Department:** Public Welfare  
**Location:** Torrance State Hospital, State Route 1014, Torrance, PA 15779-0111  
**Duration:** May 1, 1999—June 30, 1999  
**Contact:** Linda J. Zoskey, Purchasing Agent, (724) 459-4547

**DGS A 251-351 (Rebid)** Project title: Replace Existing Heating System. Brief description: Replace the steam heating system including boilers with gas fired radiant heaters and gas fired unit heaters. Install a new rooftop A/C unit with gas heat and modify ductwork in front office area. Upgrade electrical work to assist mechanical upgrades and remove asbestos containing materials. Estimated range: Under \$100,000. Electrical construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for \$5 per set or provide your express mail account number to the office listed. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, May 12, 1999 at 11 a.m.

**Department:** General Services  
**Location:** PennDOT Maintenance Building, Waynesburg, Greene County, PA  
**Duration:** 170 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 508-91** Project title: Convert Patient Bed Cubicles, Wards 3 East and 3 South, Bengs Building. Brief description: Remove existing partitions, ceilings, and the like. Install new ceilings, partitions and doors to create new corridor and rooms. Upgrade HVAC and electrical services. Estimated range: \$100,000 to \$500,000. General, mechanical and electrical construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for \$5 per set or provide your express mail account number to the office listed. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, May 19, 1999 at 11 a.m.

**Department:** General Services  
**Location:** Mayview State Hospital, Bridgeville, Allegheny County, PA  
**Duration:** 100 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**DGS A 1572-13** Project title: Roof Replacement Building No. 12 and 13. Brief description: Replace roofs on Buildings No. 12 and 13 with a mop and torch two ply modified bituminous system. Existing roof to be demolished to the existing deck. Estimated range: under \$100,000. General construction. Plans deposit: \$25 per set. Payable to: The Commonwealth of Pennsylvania. Refundable upon return of plans and specifications in reusable condition as construction documents within 15 days after the bid opening date. The bidder is responsible for the cost of delivery of the plans and specifications. Contact the office listed to arrange for delivery of documents. A separate check must be submitted to cover the cost of delivery. Mail a separate check for \$5 per set or provide your express mail account number to the office listed. Mail requests to: The Department of General Services, Room 107, Headquarters Building, 18th and Herr Streets, Harrisburg, PA 17125, (717) 787-3923. Bid date: Wednesday, May 19, 1999 at 11 a.m.

**Department:** General Services  
**Location:** State Correctional Regional Facility, Mercer, Mercer County, PA  
**Duration:** 130 calendar days from date of initial job conference  
**Contact:** Contract Bidding Unit, (717) 787-6556

**Court Reporting—10**

**SP 1691200001** Court reporting service to take notes of testimony at hearings and provide verbatim transcripts of hearings. Approximately 25 hearings (averaging 3 days in length) will be held in July 1999. Transcripts are to be delivered on an expedited delivery schedule (within 3 working days). Approximately 25 hearings, averaging 3 days in length, will be held in January—February 2000. Transcripts are to be delivered on a regular delivery schedule (within 10 working days). Hearings to be held in Harrisburg or surrounding area. Possibility of a 2-year renewal of contract.

**Department:** Education  
**Location:** Harrisburg or surrounding area, PA  
**Duration:** July 1, 1999—June 30, 2000  
**Contact:** Carol Hrobak, (717) 787-5500

**Elevator Maintenance—13**

**0231** Sealed bids will be received at the Office of Contracts maintenance and repair of elevators. A bid proposal containing all pertinent information may be obtained by faxing your request to the above office (610) 399-2128.

**Department:** State System of Higher Education  
**Location:** Cheyney University, Cheyney and Creek Roads, Cheyney, PA 19399  
**Duration:** 1 year with renewal options  
**Contact:** Antonia Williams, Contract Administrator, (610) 399-2360

**Engineering Services—14**

**08430AG2340** To provide preliminary engineering, environmental studies, final design and services during construction on S. R. 4006, Section B01 (Quaker Bridge) and S. R. 4006, Section B00 (Porter Road Bridge) in Mercer County.

**Department:** Transportation  
**Location:** Engineering District 1-0  
**Duration:** Forty-two (42) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**08430AG2341** To retain an engineering firm to perform preliminary engineering, environmental studies, final design and services during construction for the replacement of the bridge carrying S. R. 2071, Section 001 over Muncy Creek in Wolf Township, Lycoming County.

**Department:** Transportation  
**Location:** Engineering District 3-0  
**Duration:** Forty-eight (48) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**08430AG2342** Open-end contract to provide supplementary construction inspection staff of approximately 25 inspectors, under the Department's Inspector-in-charge, to perform construction inspection services on various projects in Engineering District 3-0, that is Bradford, Columbia, Lycoming, Montour, Northumberland, Snyder, Sullivan, Tioga and Union Counties.

**Department:** Transportation  
**Location:** Engineering District 3-0  
**Duration:** Sixty (60) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**08430AG2343** Open-end contract to provide supplementary construction inspection staff under the Department's Inspector-in-charge to perform construction inspection services on various projects in the County of Erie, Engineering District 1-0.

**Department:** Transportation  
**Location:** Engineering District 1-0  
**Duration:** Thirty (30) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

**08430AG2344** To provide construction management support/inspection services on S. R. 0015, Section 009, U. S. 15 from Range Road (York County) to Ridge Road (Adams County) in York and Adams Counties, S. R. 0015, Section A12, U. S. 15 from York County line to PA 114 (includes Lisburn Road Interchange in Cumberland County, and S. R. 3015, Section 002, Harvey Taylor Bridge over Susquehanna River in Dauphin County.

**Department:** Transportation  
**Location:** Engineering District 8-0  
**Duration:** Thirty (30) months  
**Contact:** Consultant Agreement Division, (717) 783-9309

### Environmental Maintenance—15

**BF 423-101.1** Abandoned mine land reclamation, Ridgewood Mining, Inc. involves an estimated 80,000 c. y. of grading, 1,080 s. y. of rock lining w/geotextile fabric and 24 acres of seeding.

**Department:** Environmental Protection  
**Location:** Redstone Township, Fayette County, PA  
**Duration:** 360 days after Notice to Proceed  
**Contact:** Construction Contracts Section, (717) 783-7994

### Extermination Services—16

**SP-260019** Furnish all labor, material, equipment and transportation to provide exterminating service at PA Liquor Control Board locations in the following counties: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Warren, Washington, Westmoreland and Venango.

**Department:** Liquor Control Board  
**Location:** Various PA Liquor Control Board locations  
**Duration:** Five (5) years  
**Contact:** Betty J. Goodling, (717) 787-6360

### Food—19

**7177** Meat and meat products.

**Department:** Military Affairs  
**Location:** Hollidaysburg Veterans Home, Route 220 at Meadows Intersection, P. O. Box 319, Hollidaysburg, PA 16648-0319  
**Duration:** July 01, 1999 through June 30, 2000  
**Contact:** Becky Clapper, Purchasing Agent, (814) 696-5210

**7190** Bread, rolls and related products—fresh.

**Department:** Military Affairs  
**Location:** Hollidaysburg Veterans Home, Route 220 at Meadows Intersection, P. O. Box 319, Hollidaysburg, PA 16648-0319  
**Duration:** July 01, 1999 through June 30, 2000  
**Contact:** Becky Clapper, Purchasing Agent, (814) 696-5210

**430-4640** Perishable foods. Dates, specifications, quantities, special delivery instructions available upon request. For period: July, 1999.

**Department:** Public Welfare  
**Location:** Western Center, Dietary Department, 333 Curry Hill Road, Canonsburg, PA 15317  
**Duration:** July, 1999  
**Contact:** Ginny Stinespring, (724) 873-3256

**5974-Rebid** Coffee, decaffeinated, bag-in-a-box, to include two dispensing machines and complete service for the period of June 1, 1999, through June 30, 2000. Complete specifications and delivery dates available upon request from agency.

**Department:** Public Welfare  
**Location:** Harrisburg State Hospital, Cameron and Maclay Streets, Harrisburg, PA 17105-1300  
**Duration:** June 1, 1999 through June 30, 2000  
**Contact:** Jack W. Heinze, Purchasing Agent, (717) 772-7435

**0882-2918** Meat and meat products; poultry and poultry products; frozen fish; fresh prepared vegetables; fresh fruits and vegetables; fresh prepared salads; fruit, fruit juices and vegetables, frozen; miscellaneous foods: baked items, entrees, liquid eggs, non-meat items, milkshakes (frozen); cheese, American and cheddar; dairy products: cottage cheese; ice cream, sherbet and related novelties; bread, rolls and related products, fresh; pastries, pies and cakes, fresh; pureed vegetables, meats and desserts; oleomargarine; potato chips and pretzels; coffee, liquid, with dispensing equipment.

**Department:** Public Welfare  
**Location:** South Mountain Restoration Center, 10058 South Mountain Road, South Mountain, PA 17261  
**Duration:** One year beginning July 1, 1999  
**Contact:** Joseph Merlina, Purchasing Agent, (717) 749-4030/4031

### HVAC—22

**1010-023** Type of service: to provide maintenance and materials for a gas fired boiler in garage area of Maintenance Building at the corner of Water and Willow Streets, Kittanning, PA.

**Department:** Transportation  
**Location:** Maintenance, Corner of Water and Willow Streets, Kittanning, Armstrong County, PA  
**Duration:** July 02, 1999—July 02, 2000  
**Contact:** Susan Carson, (724) 543-1811

**SU-517C** Project title: SU-517C Lehman Library Upgrade Air Handling. Work shall be completed at Shippensburg University of the State System of Higher Education, Shippensburg Township, Cumberland County, PA and shall be accomplished by a Prime HVAC contractor. Brief description: Work includes cleaning the duct mounted reheat coils, install ceiling grilles and variable volume diffusers and rebalancing the air and water systems at the Ezra Lehman Memorial Library. Prospective bidders may obtain project plans by contacting Deborah K. Martin, Contract Administrator, Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257, (717) 532-1121 or fax (717) 530-4004. Prebid meeting with site visit immediately to follow will be held on Wednesday, May 12, 1999 at 10 a.m. in the Reed Operations Center. Bids due: June 1, 1999 at 4 p.m. Old Main Room 300. Public bid opening: June 2, 1999 at 2 p.m., Old Main Room 203A. The system encourages responses from small firms, minority firms, and firms which may have not previously performed work for the System. Non-Discrimination and Equal Opportunity are the policies of the Commonwealth and of the PA State System of Higher Education.

**Department:** State System of Higher Education  
**Location:** Shippensburg University, Shippensburg, Shippensburg Township, Cumberland County, PA 17257  
**Duration:** 90 days from date of Notice to Proceed  
**Contact:** Deborah K. Martin, Contract Administrator, (717) 532-1121

### Janitorial Services—23

**081-9130** To provide janitorial services for the PA Human Relations Commission located at 101 South 2nd Street, 3rd Floor, Executive House, Harrisburg. The services are to be provided on a daily basis, Monday through Friday, after 5 p.m., except State holidays. Involves 13,300 square feet of office space including two restrooms, one employes lounge and balcony. A prebid onsite inspection is required. Contact Jennifer Ayers for appointment and copy of service/bid contract. Final acceptance date for written bids is May 21, 1999, 5 p.m.

**Department:** PA Human Relations Commission  
**Location:** 101 South 2nd Street, 3rd Floor, Executive House, Harrisburg, PA 17101  
**Duration:** July 1, 1999—June 30, 2000  
**Contact:** Jennifer Ayers, (717) 783-8272

### Mailing Services—28

**SU-99-05** Shippensburg University is seeking vendors interested in submitting proposals for providing first and third class mailing services for General Search mailing, Scholars Search mailing, Minority search mailing and Inquiry mailing. All mailings will require a laser print personalized cover letter using a mail merge technique. Automation compatibility is a must, postage costs are a concern and all necessary requirements for the mailings to be sent at the lowest possible postage rates. Service to include pick-up of materials (estimated quantity: 25+ skids—two tractor trailer loads). Bidding documents may be obtained by contacting Pamela A. King at (717) 532-1121 or faxing a request to (717) 530-4004. Requests for bid documents must be received no later than May 7, 1999. All responsible bidders are invited to participate including MBE/WBE firms.

**Department:** State System of Higher Education  
**Location:** Shippensburg University, Shippensburg, Shippensburg Township, Cumberland County, PA  
**Duration:** July 1, 1999 through September 30, 1999  
**Contact:** Pamela A. King, Purchasing Agent, (717) 532-1121

### Medical Services—29

**SP3590004759 (revised)** Fixed site facility to provide physicals to Department employes in the Harrisburg area. Facility shall be located within 25 miles of downtown Harrisburg.

**Department:** Environmental Protection  
**Location:** Within 25 miles of downtown Harrisburg, PA  
**Duration:** July 1, 1999—June 30, 2000 with options to renew  
**Contact:** Ally Hubler, (717) 787-2471

### Property Maintenance—33

**00674-019-96-AS-1** Restoration of The Tail Race. Project consists of restoration of a reconstructed water powered saw mill hydro-system. Work includes: excavation, installing soil and erosion controls, hydro-seeding. A mandatory site visit and sign in will be held between May 17, 1999 and May 21, 1999, for all firms interested in submitting bids for the project. No bids will be accepted by any contractors who do not make the mandatory site visit and sign in. For directions, contact the site at (610) 582-4900. All interested bidders should submit a request and a \$25 check (nonrefundable) made payable to PHMC for a bid package to: PA Historical and Museum Commission, Division of Architecture, Room 526, 3rd and North Streets, Harrisburg, PA 17120, Attention: Judi Yingling, (717) 772-2401 or fax (717) 783-1073. Bids are due on Wednesday, June 9, 1999 at 10 a.m. Bid opening will be held in Room 526 of The State Museum of PA, Corner of 3rd and North Streets, Harrisburg, PA.

**Department:** Bureau of Historic Sites and Museums  
**Location:** Daniel Boone Homestead, R. D. 2, Box 162, Birdsboro, PA 19508  
**Duration:** May 1, 1999 to October 31, 1999  
**Contact:** Judi Yingling or Mark Heeb, (717) 772-2401

**SBC 90062001** To provide carpet cleaning for Warren County Assistance Office. The approximate square footage: 10,782—total carpet—250 carpet runners; 3,600 high traffic areas. All cleaning will be done after 5 p.m. during the week or any time on the weekend. Complete details and specifications may be obtained by contacting the procurement office.

**Department:** Public Welfare  
**Location:** Building No. 29, State Hospital Grounds, Warren, PA 16365  
**Duration:** January 1, 2000—December 31, 2002 with two 1-year renewals  
**Contact:** Rose Wadlinger, (717) 783-3767

**105** Lease Office Space to the Commonwealth of Pennsylvania. Proposals are invited to provide the PA State Police with 10,150 useable square feet of new or existing office/barracks space with parking for 76 vehicles, in Schuylkill County, PA areas within the following boundaries: Along or near SR 1008 between exit 36 and exit 37 of I-81 in either West Mahanoy or Mahanoy Townships. Proposals due: June 28, 1999. Solicitation No.: 92820.

**Department:** General Services  
**Location:** Real Estate, 505 North Office Building, Harrisburg, PA 17105  
**Duration:** Indeterminate 1998—99  
**Contact:** John Hocker, (717) 787-4394

**Sanitation—36**

**SBC000-0003** Kutztown University is seeking contractors interested in bidding on the following service for a 5 year contract commencing fiscal year July 1, 1999—June 30, 2000 and ending July 1, 2003—June 30, 2004: waste removal from Kutztown University—removal of all trash, scrap, rubbish and garbage from the campus of Kutztown University. Bid packages are available May 3, 1999 and will be received no later than 2 p.m., May 14, 1999. Persons interested in receiving a bid package should forward a written request to: Kutztown University, G. Frankhouser, Purchasing Department, P. O. Box 730, Kutztown, PA 19530, fax (610) 683-4674, or email frankhou@kutztown.edu.

**Department:** State System of Higher Education  
**Location:** Kutztown University, Kutztown, PA 19530  
**Duration:** 5 year contract  
**Contact:** G. Frankhouser, (610) 683-4663

**SP 90777011** Rental of sewer cleaning equipment and labor to operate. Please send a fax to (570) 587-7108 to request a bid package. Bid packages cannot be faxed.

**Department:** Public Welfare  
**Location:** Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, Lackawanna County PA 18411-9505  
**Duration:** July 01, 1999 through June 30, 2002  
**Contact:** Stanley Rygelski, Purchasing Agent, (570) 587-7291

**Security Services—37**

**030** Checkgate—PC Model 8091 fully digital and programmable metal/weapons detection system or approved equal. Program should be operating very close to the FAA3-gun detection standard. For questions, contact James Crytzer, FMMIII at (412) 761-1955, ext. 260.

**Department:** Corrections  
**Location:** State Correctional Institution at Pittsburgh, 3001 Beaver Avenue, Pittsburgh, PA 15233  
**Duration:** One (1) month  
**Contact:** Carol R. Schaeffer/Purchasing Agent II, (412) 761-1955, ext. 291

**SBC 90004001** This service is for one security guard at the Beaver County Assistance Office, with the hours being from 8:30 a.m. to noon; 1 p.m. till 5:15 p.m., Monday through Friday (except State holidays). Complete details and specifications may be obtained by contacting the procurement office.

**Department:** Public Welfare  
**Location:** Beaver County Assistance Office, 171 Virginia Avenue, Rochester, PA 15074  
**Duration:** July 1, 1999—June 30, 2002 with two 1-year renewals  
**Contact:** Rose Wadlinger, (717) 783-3767

**Vehicle, Heavy Equipment—38**

**99046** Washers and dryers—To provide maintenance and repairs to washers and dryers located at State Correctional Institution Chester. More detailed information can be obtained from the Institution.

**Department:** Corrections  
**Location:** State Correctional Institution Chester, 500 East 4th Street, Chester, Delaware County, PA 19013  
**Duration:** July 1, 1999—June 30, 2001  
**Contact:** Jacqueline Newson, Purchasing Agent, (610) 490-4370

**2010990018** Perform overhauls and repairs for Allison 250-C20J and Allison 250-C30P engines, components and accessories. The vendor shall hold an F.A.A. authorized Repair Station Operations Specifications with authorization to overhaul the engines, components and accessories on supplied list, Air Agency Certificate and an Allison Customer Service Facility Certificate. Detailed specifications must be obtained from the Procurement and Supply Division at (717) 783-5485. Technical questions should be directed to Chuck Honer, Aviation Unit, (717) 774-3997.

**Department:** State Police  
**Location:** 575 Airport Drive, New Cumberland, PA  
**Duration:** July 1, 1999 through June 30, 2001  
**Contact:** Diane Bolden, Procurement and Supply Division, (717) 783-5485

**Miscellaneous—39**

**9893** Religious services for Islamic faith and group services.

**Department:** Corrections  
**Location:** State Correctional Institution at Rockview, Box A, Route 26, Bellefonte, Centre County, PA 16823  
**Duration:** July 1, 1999 through June 30, 2002  
**Contact:** Cheryl Snook, Purchasing Agent II, (814) 355-4874, ext. 206

**040107** Provide five portable toilets (2 ladies, 2 men and 1 A.D.A. accessible) for rest area site 54, Interstate 81, Southbound, Luzerne County. All units to be cleaned and stocked daily. Five additional units to be available on holiday weekends. Requests for bids may be received by fax at (570) 963-4245 "Attn: Roadside," or by phoning (570) 963-4048 between 8 a.m. and 3 p.m. Monday through Friday.

**Department:** Transportation  
**Location:** Nuangola Rest Area, Luzerne County (0430), PA  
**Duration:** May 20, 1999 through October 14, 1999  
**Contact:** Norman J. Oravec, (570) 963-4928

**ADV 14** Indiana University of Pennsylvania (IUP) is seeking bids for videos and license of public performance of selected movies on video. Requests for copies of the bid package should be made in writing referencing Advertisement No. 14 and directed to the attention of Barbara Cerovich, Contracts Administrator, IUP, Robertshaw Building, 650 South 13th Street, Indiana, PA 15705; fax (724) 357-2670; email Cerovich@grove.iup.edu. Requests for bid package will be accepted until May 7, 1999. The University encourages responses from small and disadvantaged, minority and woman-owned firms.

**Department:** State System of Higher Education  
**Location:** Indiana University of Pennsylvania, Indiana, PA 15705  
**Duration:** Three (3) years  
**Contact:** Barbara Cerovich, (724) 357-2301

**RFP 1999-01** The Pennsylvania Insurance Department, Catastrophic Loss Benefits Continuation Fund (Auto CAT Fund), is soliciting a Request for Proposal from vendors to provide claims management services for motor vehicle injury claims. Prospective vendors must provide claims management services on a Statewide basis. The Request for Proposal package will be mailed to interested vendors on or after May 3, 1999 and may be obtained by writing to the following address. A preproposal conference is planned for 10 a.m. on May 17, 1999 in Room 200 of the Capitol Associates Building, 901 North 7th Street, Harrisburg, PA 17102. Further information will be included in all Request for Proposal packages.

**Department:** Pennsylvania Insurance Department  
**Location:** Bureau of Special Funds, Capitol Associates Building, Room 101, 901 North 7th Street, Harrisburg, PA 17102  
**Duration:** October 01, 1999 to June 30, 2009  
**Contact:** Michael P. Sullivan, Claims Manager, (717) 783-8093

[Pa.B. Doc. No. 99-742. Filed for public inspection April 30, 1999, 9:00 a.m.]



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## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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GARY E. CROWELL,  
*Secretary*

**Contract Awards**

The following awards have been made by the Department of General Services, Bureau of Purchases:

<b>Requisition or Contract No.</b>	<b>Awarded On</b>	<b>To</b>	<b>In the Amount Of</b>
6810-08	04/27/99	Cap City Products	11,780.00
6810-08	04/27/99	FBC Chemical Corp.	186,530.00
6810-08	04/27/99	George S. Coyne Chemical Co., Inc.	27,060.00
6810-08	04/27/99	Interstate Chemical Co., Inc.	47,290.00
6810-08	04/27/99	Lidochem, Inc.	7,245.00
6810-08	04/27/99	Magnatrade Corp.	68,775.00
6810-08	04/27/99	R. J. Glass, Inc.	25,830.00
6810-08	04/27/99	Sal Chemical Co., Inc.	23,200.00
6810-08	04/27/99	Textile Chemical Co., Inc.	43,530.00
7910-02	04/27/99	Nilfisk-Advance, Inc.	50,142.16
7910-02	04/27/99	Airwick Professional Products, Inc.	50,142.16
7910-02	04/27/99	XPEDX—Harrisburg Division	50,142.16
7910-02	04/27/99	Mastercraft Industries, Inc.	50,142.16
7910-02	04/27/99	Minuteman International, Inc.	50,142.16
7910-02	04/27/99	Windsor Industries, Inc.	50,142.16
7910-02	04/27/99	C. R. Faber Rental and Supply, Inc.	50,142.16
7910-02	04/27/99	Galer & Hults, Inc.	25,071.08
7910-02	04/27/99	Environmental Services Specialist	25,071.08

**Requisition**

<b>Contract No.</b>	<b>Re-bid</b>	<b>Awarded On</b>	<b>To</b>	<b>In the Amount Of</b>
7930-04	Re-bid	05/01/99	Americlean Systems, Inc.	54,326.59
7930-04	Re-bid	05/01/99	Diamond Chemical Co.	54,326.59
7930-04	Re-bid	05/01/99	Econolab, Inc.	54,326.59
7930-04	Re-bid	05/01/99	Sanolite Corp.	54,326.59
7930-04	Re-bid	05/01/99	Burns Chemical System, Inc.	54,326.59
8920-06	Sup No. 2	04/27/99	Union Chill Mat Co.	10,000.00
8920-06	Sup No. 2	04/27/99	Alliant Food Service Pittsburgh	50,000.00
8920-06	Sup No. 2	04/27/99	Polar Bear, Inc.	10,000.00
1132118-01		04/20/99	Raytex Fabrics, Inc.	295,350.00
1396118-01		04/20/99	Beroc, Inc.	93,000.00
1445228-01		04/20/99	Best Line Leasing, Inc.	26,500.00
1450118-01		04/20/99	Patterson Dental Supply, Inc.	20,248.00
1455218-01		04/20/99	Rohrer Bus Sales	34,410.00
1508118-01		04/20/99	Logans Marketing	24,270.00
1523118-01		04/20/99	Envirodyne Systems, Inc.	28,200.00
1600218-01		04/20/99	Sani-Med Distributors, Inc.	24,975.00
7297200-01		04/20/99	Northeast Auto Outlet	20,238.25
8208090-01		04/20/99	Miller AC Concrete Prod., Inc.	54,761.00
8504830-01		04/20/99	Wharton Hardware and Supply	33,980.00

GARY E. CROWELL,  
Secretary

[Pa.B. Doc. No. 99-743. Filed for public inspection April 30, 1999, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 260—267, 269, 270, 260a—266a, 266b AND 268a—270a]

#### Hazardous Waste

The Environmental Quality Board (Board) by this order deletes Chapters 260—267, 269 and 270 and renumbers existing or adds new hazardous waste regulations in Chapters 260a—266a, 266b and 268a—270a. The changes are the result of the Department of Environmental Protection's (Department) Regulatory Basics Initiative and Executive Order 1996-1. Under the Regulatory Basics Initiative and Executive Order 1996-1, the Department reviewed the Commonwealth's existing hazardous waste regulations to identify where the regulations could be improved.

This order was adopted by the Board at its meeting of February 16, 1999.

#### A. Effective Date

With the exception of Chapter 264a, Subchapter S, these amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking. The provisions of Chapter 264a, Subchapter S will become effective upon delegation of the corrective action program to the Department by the Environmental Protection Agency (EPA).

#### B. Contact Persons

For further information contact Rick Shipman, Division of Hazardous Waste Management, P. O. Box 8471, Rachel Carson State Office Building, Harrisburg, PA 17105-8471, (717) 787-6239; or Leigh B. Cohen, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This rulemaking is available electronically through the Department's Web site (<http://www.dep.state.pa.us>).

#### C. Statutory Authority

The final rulemaking is being made under the authority of sections 105, 401—403 and 501 of the Solid Waste Management Act (SWMA) (35 P. S. §§ 6018.105, 6018.401—6018.403 and 6018.501); sections 105, 402 and 501 of The Clean Streams Law (35 P. S. §§ 691.105, 691.402 and 691.501); and section 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-20). Under sections 105, 401—403 and 501 of the SWMA, the Board has the power and duty to adopt rules and regulations concerning the storage, treatment, disposal and transportation of hazardous waste necessary to protect the public's health, safety and welfare, and the environment of this Commonwealth. Sections 105, 402 and 501 of The Clean Streams Law grant the Board the authority to adopt regulations necessary to protect the waters of this Commonwealth from pollution. Section 1920-A of The Administrative Code of 1929 grants the Board the authority to promulgate rules and regulations necessary for the proper work of the Department.

#### D. Background and Summary

The Department administers the hazardous waste program under numerous State laws, including the SWMA (35 P. S. §§ 6018.101—6018.1003), the Hazardous Sites Cleanup Act (HSCA) (35 P. S. §§ 6020.101—6020.1304), The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Small Business and Household Pollution Prevention Program Act (35 P. S. §§ 6029.201—6029.209); the Air Pollution Control Act (35 P. S. §§ 4001—4015); and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-17 and 510-20).

Numerous Federal statutes applicable to hazardous waste management activities are administered by Federal agencies, including the Environmental Protection Agency (EPA). The EPA administers the Resource Conservation and Recovery Act (RCRA) (42 U.S.C.A. §§ 6901—6992) and Federal regulations in 40 CFR Parts 124, 260—270, 273 and 279, which contain the basic Federal hazardous waste program requirements. RCRA provides that no state "may impose any requirements less stringent than [EPA's RCRA regulations] respecting the same matter governed by such regulations." 42 U.S.C.A. § 6929. Therefore, a state standard less stringent than the RCRA standard respecting the same matter would be superseded by Federal law.

In addition, RCRA provides that states may apply for and receive authorization from the EPA for all or parts of the state hazardous waste management program, under 42 U.S.C.A. § 6926 and 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs). The EPA authorization essentially eliminates the dual Federal and state permitting requirements for the hazardous waste management activities that are covered entirely within the scope of the state program authorized by the EPA, and thereby allows the regulated community to comply with state law in lieu of the affected parts of Federal law. RCRA provides that an action taken by a state under an authorized hazardous waste program "shall have the same force and effect" as an action by the EPA under RCRA. 42 U.S.C.A. § 6926(d). The EPA retains enforcement authority over authorized state provisions and Federal law.

RCRA was amended in 1984 to add the Hazardous and Solid Waste Amendments of 1984 (HSWA) which authorized the EPA to impose and administer directly certain more stringent requirements in all states unless the state has been expressly authorized to administer the HSWA. The HSWA requirements are listed in tables appearing in 40 CFR Part 271. State law may cover the same subject areas and impose standards that are at least as stringent as the HSWA and may be broader in scope than the HSWA.

The Commonwealth received authorization for the State hazardous waste program, effective January 30, 1986, 51 FR 1791 (January 15, 1986). This authorization relieves the regulated community of the burden of obtaining EPA permits for treatment, storage or disposal facilities (TSDs). However, the regulated community must still comply with all EPA requirements under the HSWA, in addition to all applicable Commonwealth requirements. One purpose of this rulemaking is to adopt the HSWA requirements. The Department intends to seek authorization for the HSWA requirements, so that the regulated

community will only need to comply with this Commonwealth hazardous waste requirements in order to be in compliance with RCRA.

Since the Commonwealth received its authorization in 1986, the Board has adopted several hazardous waste rules. The Commonwealth's hazardous waste regulations were most recently significantly amended with substantive changes at 23 Pa.B. 363 (January 15, 1993). This regulatory amendment is referred to as PK-4. The basic framework for the Department's hazardous waste program was amended in that rulemaking through the definition of "waste" and related terms such as "coproduct." These provisions, which differ significantly from the federal hazardous waste regulations, are currently contained in the Department's regulations. This final rulemaking deletes these requirements and replaces them with the Federal regulations.

The Department has reviewed all of its hazardous waste regulations under Executive Order 1996-1. As a consequence of its review, the Department has determined that continuing to regulate hazardous waste in this Commonwealth under a regulatory scheme that differs from the schemes found in the Federal regulations and in other states' regulations creates confusion for the regulated community. In addition, the Department has determined that adopting the Federal regulations with some modification that is justified by an identified compelling state interest will protect human health and the environment. The regulatory amendments that are finalized in this rulemaking are intended to align the Department's hazardous waste program with the Federal program by incorporating by reference the applicable Federal hazardous waste regulations and to maintain this consistency in the future as the Federal program evolves. It is expected that the Commonwealth will seek an authorization update from EPA for its hazardous waste program based on this final rulemaking.

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

The proposed amendments were published at 27 Pa.B. 6407 (December 6, 1997). The 60-day public comment period ended on February 4, 1998. The Department received comments from 30 citizens and regulated persons. Comments were also received from the Independent Regulatory Review Commission (IRRC) and the EPA. All comments received were given due consideration and review, and changes were made to the amendments in response to comments received. The Board believes that the regulations have been improved as a result of the efforts of the commentators. A copy of the Comment and Response Document prepared for this rulemaking may be obtained by contacting Rick Shipman, Division of Hazardous Waste Management, at the address given in Section B of this Preamble.

The changes contained within these final amendments were reviewed and approved with certain recommendations by the Department's Solid Waste Advisory Committee (SWAC) on July 9, 1998. SWAC suggested the following: 1) include the coproduct transition scheme in the preamble; 2) clarify the provisions of § 261a.7 (relating to residues of hazardous waste in empty containers) to indicate that the material in an empty container means a material that, if disposed, would be a hazardous or solid waste in accordance with the SWMA; 3) clarify that the definition of "financial institutions" could be broader than "banks"; 4) reexamine whether or not an 8,000 Btu/lb. minimum heating value is justified when the Federal regulations set a 5,000 Btu/lb. minimum heating value for

small quantity onsite burners, § 266a.108 (relating to small quantity onsite burners); and 5) clarify that the exemption from application and administration fees applies only to the recycling related activities prior to reclamation at a facility permitted for treatment of hazardous waste. The Department revised the final form rulemaking to conform to SWAC's suggestions except for SWAC's suggested changes to § 261a.7 and to the financial assurance provisions. Regarding § 261a.7, the Department determined that until a material is actually disposed, the Department does not have jurisdiction over a material that, if disposed, would be a hazardous or solid waste. Therefore, the regulation cannot be amended to regulate these materials. With regard to the suggestion that the term "financial institution" could be broadened to include more than banks, the Department agrees that the term "financial institution" should be broadened. However, for purposes of letters of credit, the Department found that it should only accept letters of credit issued by banks since banks are the only institutions for which the Department can be assured that the institution will issue a letter of credit that is regulated by Commonwealth law. Finally, the Department reexamined whether or not an 8,000 Btu/lb. minimum heating value for small quantity onsite burners in § 266a.108 is justified. The Department determined that a 5,000 Btu/lb. minimum heating value is adequate to ensure safe operation of small quantity onsite burners subject to § 266.108.

Substantive changes to the proposed amendments which are made in this rulemaking are discussed in this Preamble by general topic. Several stylistic or typographical corrections are not discussed. Amendments to the regulations which have not been changed from the proposed rulemaking are discussed in the Preamble published with the proposed amendments at 27 Pa.B. 6407.

#### *Format and Interface with 40 CFR*

The Board's proposed amendments to the hazardous waste regulations deleted the current text of the Commonwealth's hazardous waste regulations and added new chapters that incorporate by reference the Federal hazardous waste regulations. The purpose of incorporating by reference is to ensure that the Commonwealth's hazardous waste regulations are consistent with the Federal regulations. In cases for which the Board has determined that the Commonwealth has a compelling State interest to promulgate regulations that are more stringent than the Federal regulations, the Board has promulgated regulations that are more stringent than the Federal regulations.

The proposed amendments were formatted so that the first section of each Commonwealth chapter contained language to incorporate by reference each corresponding Federal part that the Commonwealth proposed to incorporate by reference. Individual Commonwealth sections were identified by a small letter "a" that was included in the section number. The sections with an "a" contained Commonwealth additions to, deletions from or modifications of the Federal regulations that had been incorporated. In most instances, the Commonwealth chapter numbers corresponded to the parallel Federal part numbers; the Commonwealth subchapter numbers corresponded to the parallel Federal subpart numbers; and the Commonwealth section numbers corresponded to the parallel Federal section numbers. In instances for which no Commonwealth section number existed for a Federal counterpart section, the Commonwealth decided to incorporate the Federal section without modification. The final-form regulations retain this format.

The EPA was concerned with the Board's use of the word "notwithstanding" in sections that contained modifications to the Federally incorporated language and the phrase "in addition to" in sections that contained additions to the Federal language. The EPA felt that the resulting provisions were confusing since they did not identify specifically the Federal language that was being modified. The Board has removed all of the "notwithstanding" language and replaced it with language that identifies more clearly the Federal language that is being modified by the Commonwealth provisions. The Board has decided that the phrase "in addition to" clearly indicates that the Commonwealth intends to add to the Federally incorporated provisions, and therefore, the Board has decided to continue to use the phrase "in addition to" to indicate additions to Federally incorporated language.

The EPA was also concerned about the Board's blanket substitution of terms found in proposed § 260a.3(a) (relating to terminology and citations related to Federal regulations). The EPA was particularly concerned about individual Commonwealth sections for which the substitution of terms should not apply because the EPA retains certain authorities or responsibilities, or because the EPA cannot delegate certain incorporated provisions of 40 CFR in the state authorization process. Based on the EPA's identification of these individual sections, the Board has made specific exceptions from the substitution of terms found in § 260a.3(a). In situations in which a blanket substitution does not apply to a particular provision, but for which the Department inadvertently may have applied a blanket substitution, the regulatory provision should be read in a manner that is consistent with the law. For example, Federal law prohibits states from enforcing certain RCRA provisions and gives the enforcement authority for these provisions to the EPA exclusively. These provisions should be read to be unenforceable by the Commonwealth, regardless of whether or not the Commonwealth regulations include an inappropriate substitution of terms.

The EPA pointed out that dates contained in the Federally incorporated language or in the Commonwealth's proposed language could be confusing. The Board has reviewed all of the dates contained in the Federally incorporated language and has modified those dates when necessary to reflect accurately the Commonwealth's authority to regulate. For example, proposed § 264a.570 (relating to applicability) modified the Federal date for compliance for certain drip pad operations from December 6, 1990, to a Commonwealth date of January 11, 1997. Drip pads have been subject to Federal regulation since December 6, 1990, but were not subject to Commonwealth regulatory requirements until January 11, 1997. The EPA suggested that the Commonwealth should retain the Federal date for HSWA units in its regulations since the regulated community has been subject to Federal regulation for HSWA units beginning on the date that EPA promulgated HSWA regulations. The Board has reviewed the EPA's suggestions on date modification and has concluded that the Commonwealth does not have the authority to enforce regulatory provisions prior to the date on which the regulatory provisions were promulgated in this Commonwealth. Therefore, the Board has retained the Commonwealth's effective dates.

#### *Coproduct*

The proposed rulemaking deleted from the definitions section of the hazardous waste regulations the terms "coproduct," "byproduct," "solid waste" and "waste" and

replaced them with the Federal definition for "solid waste" in 40 CFR 261.2 (relating to definition of solid waste). Several commentators were concerned that certain facilities that produced coproducts under the Commonwealth's existing system would suddenly find themselves regulated under the Federally incorporated language. The commentators suggested that the Board include a transition period for these facilities. The Board believes that most facilities currently producing a coproduct will find that their coproduct does not fall within the Federally incorporated definition of solid waste in 40 CFR 261.2. However, the Board recognizes that it may not be aware of all of the facilities that may be handling materials as coproducts, and therefore, the final form regulation includes a transition period for these facilities in § 260a.30 (relating to variances from classification as a solid waste). The transition period is intended to allow the operators of these facilities to determine if their coproducts do not fall within the Federally incorporated definition of solid waste or if the operators of these facilities will have to apply to the Department for a variance from classification as a solid waste under the Federally incorporated variance provisions found in 40 CFR Part 260, Subpart C (relating to rulemaking petitions) and § 260a.20 (relating to rulemaking petitions). The final-form regulation also includes a 90-day notification period during which time any person producing, selling, transferring, possessing or using a material as a coproduct that is not exempt from regulation in other parts of these final-form regulations shall notify the Department so that the person can qualify for the transition period.

#### *Definitions—§ 260a.10*

In response to the concerns of several commentators, the Board has modified § 260a.10 (relating to definitions), of the final-form regulations so that all of the definitions are contained within one section rather than in several subsections. The definition section is now in alphabetical order and includes every term that modifies a Federal definition, adds to a Federal definition or is excluded from the incorporation by reference of the Federal definitions. The Board received several comments suggesting that the final-form regulation would be easier to follow if it included definitions found in SWMA. The final-form regulations do include SWMA definitions for those terms that are replacing Federal regulatory terms, as well as, for other terms, the inclusion of which is intended to clarify the SWMA definitions. For example, the term "disposal" is defined using the SWMA definition rather than the Federal regulatory definition.

#### *Definition of "Hazardous Waste"—§ 261a.3*

The proposed rulemaking did not incorporate by reference the Federal exclusion for high temperature metals reclamation (HTMR) slags derived from listed hazardous wastes that meet health-based criteria. The Federal regulation in 40 CFR 261.3(c)(2)(ii)(C) provides an exemption for HTMR slags that meet certain criteria and that are disposed of in Subtitle D units. The purpose of the Federal exemption is to allow operators to dispose of hazardous HTMR slag in Subtitle D landfills rather than requiring them to dispose of the slags in Subtitle C facilities. The Federal exclusion does not affect any other aspect of the management of hazardous HTMR slags. The Department has determined that these HTMR slags should be disposed of as hazardous wastes and should not be permitted to go to Subtitle D landfills for the following reasons as follows.

Several commentators felt that the Federal provision should be incorporated by reference so that these slags would be excluded from regulation. The commentators believe that if the Board does not incorporate the exclusion and eliminates the definition of "coproduct," beneficial uses of HTMR slag would be eliminated and recycling of HTMR slag would be discouraged.

The Department reviewed this provision and found that even if the Board did adopt the Federal exclusion for these HTMR slags, HTMR slags that are being recycled would nonetheless continue to be subject to all of the Commonwealth regulations that apply to the storage or treatment of hazardous wastes. Furthermore, the Department believes that this requirement will encourage recycling of these slags, since recycling may be a more economical alternative than disposal of these slags in accordance with hazardous waste disposal requirements.

The Board also bases its decision to prohibit these slags from going to Subtitle D landfills, because in past rulemakings, the Department received many comments from the public opposing a proposal to allow conditionally exempt small quantity generator (CESQG) hazardous waste to go to hazardous waste landfills. Like HTMR slags, the EPA was not concerned about CESQG wastes going to Subtitle D landfills but the public was concerned. Since the EPA exempts HTMR slags from the definition of "hazardous waste" only to allow for its disposal in Subtitle D landfills, the Board believes that the public would not approve of this exemption any more than it approved of the exemption to allow CESQG waste to go to Subtitle D landfills.

The beneficial uses of HTMR slag will not be affected by the Board's decision not to incorporate the Federal exemption. Beneficial uses do not involve "disposal in Subtitle D units," which is the specific exemption in 40 CFR 261.3(c)(2)(ii)(C), and therefore, to the extent that beneficial uses are authorized by the current hazardous waste regulations, beneficial uses are authorized by the final-form regulations. Since the final-form regulations do not amend the existing hazardous waste regulations with regard to this exemption, the regulated community will experience no additional costs as a result of the final-form regulations. In addition, HTMR slags that have been determined to be coproducts or that are beneficially used are HTMR slags that are residual wastes. The beneficial use or coproduct status of residual waste HTMR slags is unaffected by these hazardous waste regulations.

Based on comments received, the Board has decided to incorporate by reference the Federal exemption for biological treatment sludge generated from the treatment of organic waste from the production of carbamates and carbamoyl oximes as well as wastewaters from the production of carbamates and carbamoyl oximes. The commentators felt that the Department's lack of experience with these wastes was not a sufficiently compelling reason to continue to regulate them as hazardous wastes.

The exemption in 40 CFR 261.3(c)(2)(ii)(D) for certain listed wastes from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156 and K157) was not included as an exclusion in the proposal because the Federal listings and the exclusion were relatively new, controversial and had been challenged in a lawsuit (*Dithiocarbamate Task Force v. EPA*, 98 F.3d 1394). In addition, the Department was unable to verify if any hazardous waste handlers for EPA hazardous waste numbers K156 and K157 exist in this Commonwealth at the time that the proposed rulemaking was being developed, because the waste listing was very recent. This lack

of information prompted concern for automatically adopting by reference the exemption and its effect in this Commonwealth. The Department has researched whether any entities exist in this Commonwealth that have been affected by this exemption and determined that no entities within this Commonwealth would be affected by this exemption at this time. The Department has also conducted a detailed review of the EPA preamble of the carbamate rule. The Department has reviewed the extensive research and analysis conducted by the EPA on the carbamate rule and believes that the exemption would be protective of human health and the environment if such a facility began to operate in this Commonwealth.

#### *Exclusions—§ 261a.4*

Several commentators suggested that the Board should incorporate without modification the Federal exclusions found in 40 CFR 261.4 (relating to exclusions) and exclude the materials listed in 40 CFR 261.4(a) from the definition of "solid waste," rather than from the definition of "hazardous waste." The Department has reevaluated the proposed manner of adopting 40 CFR 261.4. After closer examination of the materials excluded from classification as solid wastes under 40 CFR 261.4(a), the Department agrees that there are no compelling environmental or human health needs justifying further regulation of these materials as solid wastes in the Commonwealth's hazardous waste regulations. The final-form regulations will adopt by reference and without modification 40 CFR 261.4 so that the regulation excludes from classification as solid wastes the materials identified in 40 CFR 261.4(a).

#### *Special Requirements for Hazardous Waste Generated by Small Quantity Generators—§ 261a.5*

One commentator pointed out that the PK-5 amendments to the hazardous waste regulations allowed CESQG hazardous wastes to be mixed with waste oil and transported, stored or processed as municipal or residual waste, as long as the mixture was to be recycled or reused. The commentator noted that the proposed rulemaking did not include this provision and would require these mixtures to be regulated as hazardous wastes, unless the wastes were destined to be burned for energy recovery. In accordance with the proposed rulemaking, if a mixture of CESQG hazardous waste and waste oil is destined to be burned for energy recovery, the mixture would be regulated as a residual or municipal waste. The commentator believes that if the proposed rule is finalized, waste oil burning will be encouraged rather than waste oil recycling.

The Board has incorporated by reference 40 CFR 261.5(j) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators). This Federal provision, as incorporated into the Commonwealth program, applies the Commonwealth's waste oil regulations found in Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery) to mixtures of CESQG hazardous waste and waste oil only if the mixture is destined to be burned for energy recovery. This is the same as the Federal equivalent waste oil provision found in 40 CFR Part 279 (relating to standards for the management of used oil), although the EPA has proposed to broaden the class of mixtures subject to Part 279 to include CESQG waste mixed with waste oil that is not destined to be burned for energy recovery. Mixtures of CESQG waste and waste oil should be regulated in the same manner as any other conditionally exempt small quantity generator hazardous waste if the mixtures are not destined to be burned for energy recovery. The

Department has developed a proposed chapter of waste oil regulations published at 29 Pa.B. 1975 (April 10, 1999). The issue regarding mixtures of waste oil and CESQG generator waste has been addressed in that proposed rulemaking, which will also consider the final outcome of the May 6, 1998, the EPA proposed/direct final-form regulations regarding recycling of these mixtures.

*Transporter Requirements for Conditionally Exempt Small Quantity Generators—§ 261.a5*

The Board has added a provision to § 261a.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) that allows CESQG facilities to transport their hazardous waste without using a hazardous waste transporter as long as the CESQG facility complies with § 261a.5 and 40 CFR 261.5. A CESQG facility is deemed to have a transporter license if the CESQG complies with § 261a.5(b) and 40 CFR 261.5.

*Requirements for Recyclable Materials Except Waste Oil—§§ 261a.2, 261a.4, 261a.6, 270a.60 and Chapter 266a*

In the proposed rulemaking, the Board intended to require operators to obtain permits for treatment activities related to recycling of hazardous wastes. The proposed rulemaking included this requirement in § 261a.6 (relating to recyclable materials). Several commentators found the language of proposed § 261a.6 (relating to hazardous waste materials) to be confusing and unclear about the scope of the Commonwealth's recycling permit requirements and felt that provisions in the proposed regulations conflicted with each other. Other commentators requested that the Board exclude any regulation of recycling that is more stringent than the Federal recycling requirements.

The Board did not intend to require permits for all recycling and reclamation activities in its proposed rulemaking. The proposed rulemaking incorporated most of the Federal regulations that exempt from permitting most recycling and reclamation activities that occur within this Commonwealth. Specifically, the proposed regulation incorporated the Federal definition of "solid waste" in 40 CFR 261.2 the Federal exclusions in 40 CFR 261.4; the Federal provisions on recyclable materials in 40 CFR 261.6 and the Federal provisions for reduced management standards for certain recycling activities contained in 40 CFR Part 266 (relating to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities). The final-form regulations clarify the Board's intent to regulate certain activities associated with recyclable materials.

After the proposed rulemaking was published, the Department reviewed all of the hazardous waste recycling activities that occur in this Commonwealth to determine how many facilities are impacted by its recycling regulations and whether the recycling regulations are essential to assuring proper management of hazardous waste that is destined for recycling or reclamation. As a result of this review, the Department identified approximately 60 hazardous waste recycling facilities in this Commonwealth that are currently subject to recycling requirements that are more stringent than the Federal requirements. Of these, six are required to receive individual permits—the remainder operate under a permit by rule. Onsite solvent recovery accounts for the greatest number of the activities subject to a permit by rule.

Regarding the individually permitted facilities, the six facilities are subject to the Federal storage permit re-

quirements in 40 CFR 261.6(c). In addition to the storage permit requirement, the Department found that the following processes occur at these facilities prior to reclamation: physical treatment, chemical/physical treatment and thermal treatment. The Board has determined that the SWMA requires these facilities to obtain permits for these activities, because these activities make the waste suitable for recovery. Furthermore, the activities at these facilities are identical to activities that are regulated as permitted treatment activities at hazardous waste facilities where the treatment process neutralizes the waste; renders the waste nonhazardous or less hazardous; or makes the waste safer for transport, storage or disposal.

Regarding the facilities regulated by permit by rule, the Department determined that permits by rule ensure adequate protection of human health and the environment without being overly burdensome on the facilities' operations. Permit by rule is a self implementing process where the facility is deemed to have a permit as long as the facility complies with the requirements specified in the applicable permit by rule that is contained in the regulation. A permit by rule does not require the operator to submit a permit application or financial assurance information; and recordkeeping and reporting are minimal. The Department uses the permit by rule approach for those activities for which the statute mandates regulation but for which the technical complexity of the operation does not justify a full written permit. The permit by rule provisions for hazardous waste recycling facilities are available for: 1) battery manufacturing facilities that treat spent, lead acid batteries prior to reclaiming them; 2) facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of precious metals; and 3) facilities that treat hazardous waste onsite prior to reclaiming the hazardous waste. The permit by rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed § 270a.60(b)(4)) has been deleted in the final-form regulations. Since the refinery is the actual reclamation unit, there is no need for a permit or permit by rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit by rule for treatment prior to onsite reclamation.

Examples of activities conducted at battery manufacturing facilities reclaiming spent lead acid batteries that are covered by a permit by rule include: 1) breaking battery cases to remove acid, 2) physical separation of the lead components from the plastic cases, and 3) physical mixing of the lead component with flux materials, limestone, coke or other additives to prepare the materials for charging to the secondary lead smelter. The smelter is the reclamation unit and is not subject to a permit; the other activities described above meet the SWMA definition of "treatment."

Examples of activities conducted at facilities that reclaim economically significant amounts of precious metals that are covered by a permit by rule include: 1) various physical, chemical or electrochemical methods used to extract silver metal from X-ray or photographic film fixers; and 2) drying silver recovery media prior to charging to the secondary smelter. The smelter is the reclamation unit not subject to a permit. The other activities described meet the definition of "treatment."

Examples of activities conducted at facilities that reclaim hazardous waste onsite can be extremely varied. The most common onsite reclamation is solvent recovery. Physical separation of the spent solvent and water or

sludge would constitute an activity subject to permit by rule. In some cases, the spent solvent can be placed directly into a distillation unit, in which case there is no treatment prior to reclamation and the permit by rule would not be applicable. The distillation unit is the reclamation unit not subject to a permit. Other onsite reclamation activities that require a physical, chemical or thermal process prior to placing the recyclable materials in any of the various reclamation units for onsite recovery would be subject to permit by rule rather than a full hazardous waste treatment permit.

In the final-form regulations, the only Federal provision regarding recycling exemptions that the Board has not incorporated by reference is 40 CFR 261.6(c). This Federal provision includes a parenthetical phrase that states that the recycling process is exempt from regulation. In retaining the exclusion of 40 CFR 261.6(c) from the Commonwealth's regulations, the Commonwealth does not intend to regulate all recycling activities. Specifically, reclamation and recovery processes tend to resemble or replace a manufacturing process, and therefore, the permit requirement is not intended to apply to the reclamation or recovery process itself. Operation of the recovery process such as feed rates, temperature, residence time and the construction of the recovery unit are dictated by the specific process and should not be regulated in the same manner as a waste management unit. The Department intends to regulate only those activities that utilize a method, technique or process to change the physical, chemical or biological character of a hazardous waste to make the waste suitable for recovery. Consequently, the Department does not intend to regulate the actual reclamation or recovery process.

The Department does intend to regulate more extensively than the Federal government certain hazardous waste activities that occur prior to the actual reclamation or recycling process, such as those processes described in the previously cited examples. The Department believes that it is responsible for ensuring that hazardous waste is properly managed before it enters the recycling process so that it poses a minimal risk to human health and the environment. The Board believes that including 40 CFR 261.6(c) in the Commonwealth's regulations adds confusion since the Department has been presented with an argument that 40 CFR 261.6(c) exempts all nonstorage related recycling activities, including nonstorage activities that occur prior to the actual recycling or reclamation process. Therefore, the Board is not incorporating by reference 40 CFR 261.6(c). This is not a substantive change from the proposed rulemaking, but it simply clarifies a point which the commentators found confusing.

In addition to the Board's decision not to incorporate 40 CFR 261.6(c), the Board is promulgating regulations in Chapter 266a (relating to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities) that are more stringent than the Federal requirements for battery manufacturers and precious metals recovery operations. 40 CFR 266.70 (relating to precious metals reclamation) requires precious metals reclaimers to comply with minimal requirements. The Board has added to the Federal requirements the requirement for precious metal reclaimers to obtain an individual permit under § 261a.6(c) (relating to recyclable materials) or to comply with a permit by rule established by § 270a.60(b)(6) (relating to permits by rule). The permit by rule allows the precious metals reclaimers to operate in a manner that is protective of human health and the environment but that is less burdensome than operating under an individual permit.

The Board does not intend to regulate the recovery process itself, only those activities that occur prior to the recovery process to make the material suitable for recovery such as chemical or electrochemical precipitation and hydrometallurgical processes. In addition, § 266a.70(a)(1) (relating to applicability and requirements) grants to transporters of recyclable materials used for precious metals recovery a license for the transportation of those materials if certain requirements are met. This transporter license by rule is intended to encourage precious metals recovery by easing the burden and cost of transporting the recyclable materials.

Battery reclaimers are subject to 40 CFR 266.80 (relating to lead acid battery reclamation). As with the precious metals reclaimers, the Board's regulation in § 266a.80 (relating to applicability of regulations) requires battery reclaimers to obtain an individual permit under the requirements of § 261a.6(c), unless the operator is eligible for the permit by rule established by § 270a.60(b)(3). The Federal regulations require operators of spent lead acid battery reclamation facilities to obtain a storage permit only. The permit by rule in § 270a.60(b)(3) applies to battery manufacturing facilities that reclaim spent lead acid batteries. Again, the Board's intent in promulgating the permit by rule is to encourage battery manufacturers to reclaim spent lead acid batteries in a manner that is protective of human health and the environment but that is less burdensome than operating under to an individual permit.

Consequently, all Commonwealth recycling activity regulation that is more extensive than the Federal requirements is found in §§ 261a.6, 266a.70, 266a.80 and 270a.60. The Commonwealth does not intend to regulate the recycling process itself, but it does intend to regulate certain activities that occur prior to the recycling process. In making this decision, the Board has promulgated several permits by rule so that most facilities will not be subject to all of the burdensome requirements associated with securing an individual permit.

The Board supports the hierarchy of preferred waste management practices to promote more effective methods of hazardous waste management. To promote the improved operation of existing hazardous waste recycling facilities and to encourage the development of new improved technologies for hazardous waste reclamation, the final-form regulations eliminate the requirement for permit application, modification and administration fees for hazardous waste recycling permits, and for research, development and demonstration permits (40 CFR 270.65 (relating to development and demonstration permits)) that employ new improved technologies for hazardous waste reclamation. The elimination of the fee requirements applies only to those activities directly involved in a recycling activity. If a facility conducts other treatment, storage or disposal activities in addition to the recycling activity, the fees are applicable to those other activities.

#### *Residues of Hazardous Waste in Empty Containers— § 261a.7*

The proposed rulemaking retained the Commonwealth's requirement to manage as hazardous wastes residues from empty containers and inner liners removed from empty containers if the residues meet the criteria used to identify hazardous waste. The Board did not intend the proposed rulemaking to change the existing practices for the management of hazardous waste in empty containers or inner liners removed from empty containers. Two commentators felt that the proposed rulemaking classified as a residual waste all containers or container liners



being transported to a facility for processing or disposal, regardless of whether the containers could be reused or otherwise qualify as coproducts under the residual waste program. In addition, the commentators found the proposed rulemaking to be unclear as to whether the residual waste classification of the containers and container liners applies only during transportation or during other stages of container and container liner management. Finally, the commentators did not think that the proposed rulemaking provided the regulated community with clear guidance on how to manage residues from empty containers.

The proposed rulemaking was initially written to classify as residual waste empty containers and inner liners removed from empty containers to allow operators to transport these items for processing or disposal without using a hazardous waste transporter. The residual waste classification was intended to apply to these items for transportation purposes only. In addition, the regulations were intended to regulate as hazardous wastes those residues that may remain in containers or inner liners if those residues are ever removed from the empty containers or inner liners. The proposed rulemaking did not intend to regulate the residues while they remain in the empty containers or inner liners.

The Board agrees that the proposed rulemaking is confusing. Therefore, the final-form regulations clarify the intent of the proposed rulemaking. The final-form regulations specifically state that the residues in empty tanks, containers and inner liners removed from empty containers become subject to hazardous waste regulation only after the residues are removed from the empty containers, tanks or inner liners. The final-form regulations focus on the residues rather than on the containers that hold the residues. As intended by the proposed rulemaking, the containers, tanks and inner liners will not be subject to hazardous waste regulation unless the containers, tanks or inner liners satisfy the criteria used to determine whether or not a solid waste is a hazardous waste. Therefore, if a tank, container or inner liner is determined to be a residual waste under the SWMA, the tank, container or inner liner will be eligible for residual waste coproduct status if it meets all of the residual waste coproduct criteria.

SWAC was presented with a proposal that included the term "hazardous material." SWAC specifically requested that the Department clarify § 261a.7 (relating to residues of hazardous waste in empty containers) to indicate that the material in the empty containers that is subject to these regulations is a material that, if disposed, would be a hazardous or solid waste under the SWMA. After further review, the Department found that it is unnecessary to use the terminology "material that, if disposed, would be a solid or hazardous waste" since the regulation can only apply to hazardous wastes in accordance with the applicability provisions of the hazardous waste regulations and the SWMA. As written in its final form, the regulation only applies to hazardous wastes.

#### *Manifest—Chapter 262a, Subchapter B*

In addition to the Federal manifest requirements, the Board proposed to require the use of a manifest that may have up to six parts rather than the four part manifest required by the Federal regulations. The two additional copies are sent from a Commonwealth TSD facility to the generator state and disposal state. If the Commonwealth is both the generator and disposal state, only one manifest copy must be sent to the Commonwealth to satisfy

this requirement. The Board believes that hazardous waste cannot be properly monitored unless the generator state and the disposal state can track the waste. Since the manifest contains all of the necessary information once it gets to the TSD facility, the regulation requires the TSD facility to send the manifest copies to the generator and disposal states. The existing Commonwealth regulation requires the use of a manifest that may have up to eight parts. The two copies that the final-form regulations will no longer require are the copy that the generator sends to the generator state and the copy that the generator sends to the disposal state.

Several commentators pointed out that the EPA is considering revising the manifest system to streamline it. The commentators were concerned that Commonwealth facilities will receive no benefit if the EPA does streamline the manifest system. In addition, the commentators felt that sending the additional copies to the generator and TSD states does not serve any health, safety or environmental protection purpose.

In addition to providing the generator with a mechanism for tracking hazardous waste, the Federal manifest system was designed as a paperwork reduction effort so that the EPA would not receive a copy of each manifest from each shipment in each of the 50 states. However, the Board has determined that if the regulatory agency does not receive a manifest copy, it cannot track the movement of the waste to determine whether operators are in compliance with the hazardous waste regulatory requirements. The Department's manifest copy is also used to verify payment of fees required by the HSCA. The biennial report does not provide the Department with enough information to determine compliance with fee payment requirements since the report provides data from the year prior to the year in which the report is compiled. Finally, the manifest data is also used in developing the hazardous waste facilities plan.

The EPA and Department are considering the application of electronic data interchange for manifest submission. This will not take the place of manifest requirements, but it will provide an additional option to satisfy the reporting requirements that will result in less paperwork and faster more accurate data transmission. The Department is currently exploring this option with several companies.

#### *Transfer Facility Requirements—§ 263a.12*

The proposed rulemaking retained a Commonwealth requirement for all transporters to submit for approval a preparedness, prevention and contingency (PPC) plan if they utilize in-transit storage of hazardous waste for more than 3 days but no more than 10 days or if they transfer hazardous waste from one vehicle to another. Several commentators pointed out that the proposed rulemaking does not provide a deadline for Department review and approval of PPC plans. One commentator suggested that the Department should be allowed 30 days to complete the review, and if the review is not approved in that time frame, the plan should be considered approved.

The Board agrees that the time frame for the review of an administratively complete plan should be limited. Review of transfer facility PPC plans will be added to the Department's Money Back Guarantee Program, which requires the Department to review listed submissions within a set time frame.

*Transporter Compliance with the Manifest System—  
§§ 263a.20 and 263a.21*

The transporter manifest requirements have been clarified to require transporters to print or type their names on the manifest forms and to prohibit a transporter from accepting or transporting hazardous waste that does not accurately correspond with the information contained on the manifest form.

*Bonding—§ 263a.32*

The provision that requires hazardous waste transporters to post bonds was included in the Commonwealth's hazardous waste regulations prior to this rulemaking. The proposed rulemaking did not include a change to this provision. One commentator felt that transporter bonds are unnecessary and that the requirement is unenforceable due to a United States Department of Transportation (USDOT) ruling which preempts it. The commentator also felt that the financial cost of possible environmental harm resulting from the transportation of hazardous waste is covered by the liability insurance requirements of the regulations.

The Board has retained the bonding requirements for transporters based on a DC Circuit Court decision, *Massachusetts v. US DOT*, 93 F.3rd 890. In that case, the DC Circuit Court found that the Massachusetts bonding requirements for hazardous waste transporters were not preempted by Federal law. The Commonwealth's bonding requirements are similar to Massachusetts's, and therefore, the Board believes that Pennsylvania's bonding requirements are not preempted by Federal law.

The bond is required by the SWMA, regardless of whether or not the environmental impairment risk is covered by liability insurance. In addition, the bond requirement has helped the Department receive timely and accurate paperwork and fee submission from the regulated community. Finally, the Department's ability to hold and forfeit a collateral bond provides incentives to transporters who owe money to the Department for civil penalties to pay those penalties.

*Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities: Purpose and Scope—§§ 264a.1 and 265a.1*

The final-form regulations are intended to have the same scope as the proposed rulemaking, but the final-form regulations have fewer subsections than the proposed rulemaking. The final-form regulations have condensed the same information that was contained in the proposed rulemaking into fewer subsections. The final-form regulations also relocated §§ 264a.1(b)(6) and 265a.1(b)(6) (relating to incorporation by reference, purpose, scope and reference) to the specific provisions that deal with surface impoundments and landfills.

*Module I Requirements—§§ 264a.13 and 265a.13*

The Board's proposed rulemaking retained the requirement for operators of TSD facilities to seek preapproval from the Department before accepting new waste streams. This requirement is known as the Module I or Mod I requirement. Several commentators opposed this requirement. The commentators stated that the requirement to obtain Department approval before accepting new waste streams exceeds Federal requirements, adds unnecessary costs and delays their ability to accept new wastes and customers. The commentators felt that the Mod I is unnecessary since it duplicates approvals granted through the permitting process. One commentator also expressed concern about the safety of confidential busi-

ness information which the operator may be required to submit as part of the Source Reduction Strategy. One commentator requested that the Board retain the Generic Module I process or an equivalent process to expedite an owner and operator's ability to receive new waste streams and to reduce burdens on the owner and operator who receives consistent waste from various generators.

In the final-form regulations, the Board has replaced the Mod I requirement with case specific individual permit conditions for TSD facilities operating under a permit issued under Chapter 264a. In place of the Mod I, § 264a.13 (relating to general and generic waste analysis) requires an operator to notify the Department before it accepts a new waste stream. The notification requirements will be contained in individual permits rather than in a regulation. Existing permitted facilities will be required to continue to use the Generic Mod I and the Mod I system unless they obtain a permit modification. The requirement for generators to submit their Source Reduction Strategy to the Department as part of this approval process has also been eliminated.

The final-form regulations retain the Generic Mod I and Mod I requirements of § 265a.13 for interim status facilities. These facilities do not have permits or approved waste analysis plans in place, so the Mod I and Generic Mod I requirements in this section are necessary to ensure that the facilities are operating in a manner that is protective of human health and the environment. When these facilities apply for and receive operating permits, the Mod I and Generic Mod I requirements will no longer apply to them, if an alternative to the Mod I requirement has been included in the permit.

*General inspection and construction inspection—  
§§ 264a.15 and 265a.15*

The Board proposed retaining the Commonwealth requirement for an operator to obtain prior Department approval before beginning construction on a new facility. One commentator felt that general inspection authority is well provided for elsewhere in law and regulation and that the regulation micro-manages the construction schedule. The commentator also felt that waiting for approvals will extend the time and cost of construction without commensurate benefit. The Board does not intend to manage the construction schedule for any facility, but the Board does believe that the Department should be fully aware of the proposed schedule. This permits the Department to be onsite for critical phases of construction (for example, installation of the liner and drilling of monitoring wells) that are essential to ensuring adequate protection of human health and the environment. Therefore, the Board has decided to retain this requirement.

*Content of contingency plan—§§ 264a.52 and 265a.52*

The proposed rulemaking required operators to submit contingency plans under §§ 264a.52 and 265a.52. These provisions required that the operators write contingency plans that comply with Department guidance for contingency plans. Several commentators stated that requiring contingency plans to be submitted in accordance with Department guidance for contingency plans is unclear since it does not identify the Department guidance for contingency plans. The commentator suggested that the Board include guidance as part of the final-form regulations. The commentators also believed that this provision is vague since it requires the plan to be submitted "at the time in the application process the Department prescribes." In addition, commentators stated that the Federal "Integrated Contingency Plans" are adequate and the

commentators requested that the Department explain the insufficiency of the Federal requirements. Finally, one commentator asked the Department to include an estimate of the economic impact that the Department contingency plan will have on the regulated community.

The Board has removed from the final-form regulations the requirement to comply with the Department's guidelines. The Department's guidelines were prepared as a guidance document to assist the regulated facilities by consolidating all emergency response plan information into one document. These guidelines are updated periodically with input from the various Department programs that require emergency response plans. The guidance document is not included in the final-form regulations, because it is not intended to be a regulation.

The EPA, as the chair of the National Response Team (NRT), published the *Integrated Contingency Plan Guidance* in the June 5, 1996 *Federal Register*. The EPA's Guidance is intended to provide a mechanism for consolidating multiple plans that one facility may have prepared to comply with various regulations into one functional emergency response plan or integrated contingency plan (ICP). Emergency response plans prepared from either guidance would contain very similar information but with different formats, therefore, the Board has decided to allow operators to use either guidance document—the Department's or the EPA's—in preparing their contingency plans. Since the requirements for submitting contingency plans with permit applications are clearly defined in other areas of the regulations, the Board has deleted from the final-form regulations §§ 264a.52(2) and 265a.52(2).

#### *Emergency procedures—§§ 264a.56 and 265a.56*

Several commentators stated that the emergency procedure requirements in §§ 264a.56 and 265a.56 (relating to emergency procedures) are unauthorized by State law, to the extent that they require an emergency coordinator to notify a Federal agency. In addition, several commentators noted that the Federal law requires notice to either a designated government official or the National Response Center, while the state provision requires notification to both the Department and the National Response Center. The commentators believe that notification should be given to the Department's regional offices rather than the Department's Central Office in Harrisburg, as the proposed rulemaking required. Other commentators suggested that it is more efficient to notify the Department's Central Office rather than requiring emergency coordinators to figure out which regional office to call. The commentators suggested reviewing the selection of the phone numbers to assure that Department is not duplicating the services and equipment of other Commonwealth entities. Finally, one commentator stated that the proposed rulemaking duplicated Federal language and that the duplicative language should be eliminated.

The Department has reviewed the emergency notification requirements proposed in §§ 264a.56 and 265a.56 and 40 CFR 264.56 and 265.56 and agrees that it is unnecessary to include the requirement to notify the National Response Center given the incorporation by reference of that requirement in 40 CFR 264.56(d)(2) and 265.56(d)(2). The Board has changed the final-form regulations so that the emergency coordinator will continue to notify the Department by telephone, but the emergency coordinator may contact either the Department's regional office or Central office. The Board has also deleted §§ 264a.56(2) and (3) and 265a.56(2) and (3) since they are duplicative of requirements incorporated by reference.

#### *TSD Use of the Manifest System—§§ 264a.71 and 265a.71*

One commentator noted that the Board should not use the term "six part manifest" in its regulations since the maximum number of manifest copies required is six. Depending on the number of parties involved in handling hazardous wastes, the number of manifest copies could be less than six. Therefore, the Board has deleted this language from the final-form regulations and has clarified that the manifest used by TSD facilities should be either a Commonwealth manifest form or another form approved by the Department.

#### *Biennial Reports—§§ 264a.75 and 265a.75*

Several commentators stated that the proposed rulemaking required operators to retain biennial reports for the life of the facility. They felt that this requirement created unnecessary paperwork without serving any practical purpose. The Board agrees and has changed the final-form regulations to conform to the Federal requirement that operators retain biennial reports for 3 years.

#### *Groundwater Monitoring—§ 264a.97*

Several commentators stated that compliance and monitoring reports required by proposed § 264a.96 (relating to compliance period) exceed Federal requirements and add unnecessary costs to the regulated community. In addition, it was noted that there are no exemptions from these requirements; and therefore, the proposed rulemaking, unlike the Federal regulations, lacks flexibility that is necessary to deal with different conditions that exist at different sites.

The monitoring and reporting requirements that the Board proposed in § 264a.96 (relating to compliance period) have been relocated to § 264a.97. These provisions are authorized in the Federal program by the incorporated Federal regulations found in 40 CFR 264.91, 264.97—264.99. However, the Federal regulations authorize these requirements through permit conditions rather than through a specific regulatory requirement. In addition, the provisions only apply to certain facilities that have releases to groundwater.

The Board has determined that permit conditions are appropriate for requirements that are determined on a case-by-case basis rather than for requirements that are applicable to an entire class of facilities. This Commonwealth's seasonal, climatological and hydrological features, including a high water table, make it necessary to require all surface impoundments, land treatment units, landfills and, in some cases, waste piles operating in this Commonwealth to conduct the same type of groundwater monitoring and reporting. Consequently, the Board's final-form regulations continue to require certain monitoring and reporting requirements, by regulation rather than by permit condition. Specifically, the Board found that the proposed monitoring and reporting requirements found in proposed § 264a.96 are necessary for the protection of human health and the environment for the following reasons:

1. A quarterly interval between sampling events would allow for early detection of a potential problem and for the operator to respond to and correct a problem before significant wide-spread contamination would occur.
2. The frequency established provides a basis for valid statistical evaluation of groundwater data.
3. Quarterly data generated considers this Commonwealth's seasonal, temporal and spatial variability and climatological variations which are not adequately taken into account with less frequent monitoring.

4. These reporting requirements allow the Department to receive the data in a timely fashion. It can be analyzed and assessed in the early stages of any environmental problem. This provides a proactive rather than a remedial response which is the purpose of the hazardous waste regulations.

These monitoring and reporting requirements, like the Federal requirements, only apply to active facilities that have releases to groundwater. For facilities that have gone through closure and are in postclosure care, some flexibility may be warranted. The Board has provided flexibility on the issue of monitoring and reporting frequency in cases in which the owner or operator of a facility that is conducting postclosure activities has demonstrated that the facility is secure. In these situations, a reduction of the monitoring frequency from quarterly to semi-annually will be allowed. The final-form regulations, by incorporation of Federal language found in 40 CFR 264.117 and 264.118 (relating to postclosure care and use of property; and postclosure plan; amendment of the plan), provide this flexibility.

*Closure and Postclosure—Chapters 264a and 265a, Subchapter G*

A minor change to §§ 264a.115, 264a.120, 265a.115 and 265a.120 has been made in the final-form regulations clarifying that Commonwealth specific procedures are required for owners or operators to certify closure and postclosure. The final-form regulations retain the certification provisions previously found in § 267.26 and which have been relocated in the final-form regulations to §§ 264a.166 and 265a.166. The final-form regulations are different from the proposed rulemaking because the proposed regulations incorporated by reference 40 CFR 264.143(i), 264.145(i), 265.143(h) and 265.145(h). These Commonwealth specific certification procedures are necessary to demonstrate that the facility is closed and that the closure or postclosure bond can be released by the Department. This change was necessary because the Federal provisions in 40 CFR 264.143(i), 264.145(i), 265.143(h) and 265.145(h) that were proposed to be incorporated by reference do not provide a mechanism for release of closure or postclosure bonds.

*Financial Assurance for Closure and Postclosure Care—Chapters 264a and 265a, Subchapter H*

The final-form regulations have been slightly modified. The final-form regulations include cross references that connect together different financial assurance provisions. The final-form regulations also update some of the terminology used in the financial assurance regulations. The term “financial institution” has been broadened to include entities other than banks, and the term “customer” has been changed to “operator.”

*Financial Assurance for Closure and Financial Assurance for Postclosure—§§ 264a.143, 264a.145, 265a.143 and 265a.145*

Several commentators noted that the Commonwealth's failure to incorporate 40 CFR 264.143, 265.143, 264.145 and 265.145 puts the Commonwealth's facilities at a competitive disadvantage, since the Commonwealth closure and postclosure RCRA requirements foreclose all of the financial instrument options available under these Federal provisions. The commentators recommended that the Board incorporate the Federal provisions into the Commonwealth's regulations.

The Board has reviewed all of the Federal provisions and has determined that, with the exception of the bond pledging a corporate guarantee, the Federal financial

instruments that are authorized by 40 CFR 264.143 and 264.145 (relating to financial assurance for closure; and financial assurance for post-closure care) fail to satisfy the SWMA requirement that operators submit bonds. In addition, Federal financial assurance mechanisms that require the use of a standby trust fund fail to satisfy the SWMA requirement that all forfeited bond proceeds go to the Solid Waste Abatement Fund.

*Liability Requirements—40 CFR 264.147 and 265.147*

Several commentators noted that proposed § 264a.147 (relating to liability requirements) contains liability insurance requirements that exceed Federal requirements. Commentators expressed opinions that the Federal requirements are sufficient and should be adopted by reference. The requirement for an ordinary public liability policy, including the amounts required, were proposed to be relocated from § 267.42 (relating to insurance coverage) to §§ 264a.147 and 265a.147 (relating to liability requirements). The proposal anticipated the need to continue to differentiate between environmental impairment and ordinary public liability coverage. Upon further review, the Department has determined that the Federal insurance provisions satisfy the SWMA requirements. Changes have been made to the EPA's insurance requirements since the Commonwealth last amended its hazardous waste insurance requirements, which now include comprehensive general (ordinary public liability) coverage, and consequently, the Federal insurance requirements now satisfy the SWMA requirements. The final rulemaking will incorporate the Federal requirement for liability requirements—the separate proposed requirement for comprehensive general liability (ordinary public liability) coverage has been removed from the final-form regulations.

*Wording of Instruments—§§ 264a.151 and 265a.151*

The proposed rulemaking incorporated by reference 40 CFR 264.151 and 265.151 (relating to wording of instruments). The Board has decided not to incorporate this Federal provision since the Commonwealth will review each instrument on a case by case basis to determine if it complies with Commonwealth law and if it is appropriate for the facility that is submitting the financial instrument.

*Form, Terms and Conditions of Bonds—§§ 264a.154 and 265a.154*

The EPA also commented that, unlike the Federal requirements, the Commonwealth does not require the owner or operator to submit the letter of credit at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The Board agrees and has modified §§ 264a.154 and 265a.154 to require submittal of a letter of credit at least 60 days prior to the date on which hazardous waste is first received by the facility.

*Special Conditions for Collateral Bonds and Bonds Pledging Corporate Guarantee—§§ 264a.156 and 265a.156*

The EPA commented that §§ 264a.156(d)(1) and 265a.156(d)(1) of the proposed rulemaking specified that the letter of credit shall be a standby or guarantee letter of credit. The Federal code only specifies a standby letter of credit and does not appear to allow a guarantee letter of credit. Depending on the Commonwealth's interpretation of “standby letter of credit” and “guarantee letter of credit,” the EPA felt that the Commonwealth could be less stringent than the Federal rule. The Board has reviewed the Commonwealth requirements for a standby or guarantee letter of credit and has found that either term is

used to describe the same type of letter of credit. Therefore, the final-form regulations have eliminated the phrase "or guarantee" from §§ 264a.156(d)(1) and 265a.156(d)(1).

The EPA noted that 40 CFR 264.143(d)(5) requires that the letter of credit must be issued for at least 1 year, must be automatically extended for a period of at least 1 year, and must require at least a 120-day notification by certified mail prior to termination. The EPA believes that the Commonwealth could be less stringent because the proposed rulemaking does not include these specific requirements. The final-form regulations include a modification to § 264a.156 to reflect the 1 year minimum time periods and the 120-day termination notice by certified mail. The same change has been made to § 265a.156.

*Cost Estimate for Closure and Postclosure Care—§§ 264a.161 and 265a.161*

The final-form regulations delete these proposed sections. The proposed provisions require an owner or operator to prepare a detailed written cost of closing the facility and providing postclosure care as specified in 40 CFR 264.142, 264.144, 265.142 and 265.144. These requirements are already incorporated by reference and therefore, the proposed rulemaking is unnecessary.

*Bond Amount Adjustments, Adequate Bond and Bond—§§ 264a.162 and 265a.162*

The EPA commented that the responsibility for determining if a bond amount change is needed rests with the permittee under the Federal requirements and with the Department under the Commonwealth's requirements. This could make the Commonwealth less stringent if the Department fails to demand that the permittee increase the bond amount in the same circumstances where the permittee would have to do so under the Federal Code. The Board agrees with this comment and has changed the final-form regulations to require operators to deposit with the Department additional amounts of bond if the cost of closure or postclosure increases. This provision has been added to §§ 264a.162 and 265a.162.

*Bond Release—§§ 264a.165 and 265a.165*

The EPA stated that under the proposed rulemaking in §§ 264a.165(e) and 265a.165(e), the Department has 6 months within which to make a decision on a bond release application. Under the Federal regulations, the regional administrator has 60 days to make a decision and notify the owner. The EPA believes that this could make the Commonwealth less stringent than the EPA. The Board has retained the 6 month review period for a bond release. The Board has determined that the Department must have 6 months to reach a decision on bond release so that the Department has the time necessary to make a correct decision on bond release. Limiting the time period to a 60 day maximum could force a decision which is based on time rather than on accurate and complete site information. Nothing in the final-form regulations prevent the Department from making a bond release decision before the 6 month time period expires.

*Management of Containers—§§ 264a.173 and 265a.173*

One commentator recommended that the Department incorporate by reference 40 CFR 264.173 and 265.173 (relating to the management of containers) without further restrictions on the labeling of containers. The commentator stated that Federal regulations require that any hazardous waste being accumulated in a satellite area be placed in a container labeled as hazardous waste and that the operator use US DOT approved containers. The

commentator pointed out that containers placed in a storage area (including generator storage of less than 90 days) must, according to Federal regulations, have the proper labels that indicate the type of waste in the containers, waste codes of the waste in the containers, and date the waste was placed in the storage area. The Board's proposed rulemaking never included a Commonwealth labeling requirement, although the Preamble inaccurately stated that the labeling requirement was being proposed. The Board's final-form regulations do not include a Commonwealth labeling requirement for containers, and any applicable Federal labeling requirements will continue to apply.

*Containment—§§ 264a.173, 265a.173, 264a.175 and 265a.175*

Several commentators noted that proposed §§ 264a.175 and 265a.175 (relating to management of containers) included detailed provisions applicable to storage of hazardous waste containers. Specific requirements for maximum container height, width and depth of container groups and aisle widths were prescribed. Comparable Federal regulations do not contain these exact requirements. Commentators stated that the proposed Commonwealth provisions do not accommodate newer containers known as "totes" and suggest that the final-form regulations be more performance oriented.

The Board agrees and has modified the proposed language in §§ 264a.175 and 265a.175 (relating to containment in the proposed regulation), to exclude the prescriptive nature of the requirements and modify the proposed rulemaking towards performance-based requirements directed toward the use of best management practices, that is, maintaining appropriate aisle spacing, heights and configuration of containers to allow for the use of more modern containers and to facilitate inspections and unobstructed movement of emergency equipment and personnel. The requirements for the management of containers have also relocated to §§ 264a.173 and 265a.173 (relating to management of containers) in the final-form regulations.

*Inspections—§§ 264a.195 and 265a.195*

One commentator suggested deleting the requirement found in § 265a.195 (relating to inspections) to inspect hazardous waste tanks every 72 hours when the facility is not operating. The commentator felt that site specific best management practices could be employed to replace inspection requirements when the facility is not operating. Another commentator stated that the inspection requirement should be retained.

After consideration, the Board has decided to retain the proposed rulemaking. The proposed language clarified that the inspections were only required at facilities that were not operating but that continued to store waste in the tank and tank system components. The Board has determined that, as long as waste remains in the tank and tank components, there is a potential for leaks and spillage, and therefore, the facility should be inspected on a regular basis.

*Surface Impoundments—§ 264a.221 and Chapter 264a, Subchapter K*

In the final-form regulations, the variance procedure that was proposed for surface impoundments was relocated from § 264a.1(b)(6) to the specific subchapters for surface impoundments, § 264a.221 (relating to design and operating requirements). This was done for clarity and the convenience of surface impoundment operators.

*Land Treatment—§ 264a.276 and Chapter 264a, Subchapter M*

The final-form regulations eliminate a redundant requirement from the proposal. In the proposal, § 264a.276 (relating to food chain crops) repeated the annual application of cadmium rates found in 40 CFR 264.278(b)(ii) (relating to unsaturated zone monitoring), which is incorporated by reference. Reiterating those application rates in the regulation is not necessary.

*Landfills—§ 264a.301 and Chapter 264a, Subchapter N*

In the final-form regulations, the variance procedure that was proposed for surface impoundments and landfills was relocated from § 264a.1(b)(6) to the specific subchapter for landfills, § 264a.301 (relating to design and operating requirements). This was done for clarity and the convenience of operators of landfills.

*Corrective Action for Solid Waste Management Units—40 CFR Part 264, Subpart S*

The proposed rulemaking did not incorporate by reference the corrective action program found in 40 CFR Part 264, Subpart S (relating to corrective action for solid waste management unit). Upon further review, the Board has decided to include the corrective action program in the Commonwealth's hazardous waste regulation. The Board's decision is based on an EPA comment stating that the Commonwealth must have regulations for corrective action if it intends to seek authorization for corrective action. Although the Commonwealth has not decided whether or not it will seek authorization for corrective action, the final-form regulations do include the corrective action provisions. However, unlike the other provisions of the final-form regulations, the effective date of the corrective action provisions is the date on which the EPA approves of the corrective action provisions as part of the Commonwealth's hazardous waste program. The Board has decided to include the corrective action regulations in the final-form regulations so that the Commonwealth can easily seek authorization for the corrective action program in the future, if it decides that it wants to administer the corrective action program.

*Recyclable Materials Used in a Manner Constituting Disposal—Chapter 266a, Subchapter C*

The proposed rulemaking required prior written Department approval of products that contain recyclable materials to be used by the public in a manner that constitutes disposal. The Board has determined that this requirement is no longer necessary. After surveying other states that do not have this requirement, the Department found that these states did not report any problems that they felt could be aided by inclusion of this type of requirement, and therefore, the Board has eliminated this requirement from the final-form regulations.

*Waste Oil—§§ 261a.6(a) and 261a.5(a); Chapter 266a.40, Subchapter E; 40 CFR 261.5(j) and 261.6(a)(4)*

The Board received several comments stating that the regulations regarding waste oil were confusing since the Board only proposed to renumber the existing regulations but did not propose to incorporate the Federal waste oil provisions into the Commonwealth's waste program. The commentators were particularly confused about cross references to the Federal waste oil requirements that are found in some of the Federal provisions that the Commonwealth has incorporated by reference. After reviewing the waste oil provisions of the proposed rulemaking, the Board has decided to write out the waste oil provisions with cross reference corrections rather than rely on an

editor's note stating that the existing waste oil provisions are being renumbered. Therefore, the final-form regulations include the text of the waste oil regulations that were intended to be renumbered only. The text of the final-form regulations include corrections to cross reference citations. The final-form regulations do not change substantively the requirements of the Commonwealth's waste oil regulations that were found previously in Chapter 266, Subchapter E.

The final-form regulations have several provisions that regulate waste oil. The final-form regulations provide that, unless excluded by Chapter 266a, Subchapter E, waste oil that is hazardous and that is being burned for energy recovery is subject to Chapter 266a, Subchapter E. The final rulemaking does not substantively amend the Department's existing regulations regarding waste oil burned for energy recovery. The only substantive change that has been made to the Department's proposed rulemaking regarding waste oil is that the Commonwealth has incorporated by reference the Federal CESQG provision found in 40 CFR 261.5(j) without modification. This provision, as incorporated, subjects mixtures of CESQG waste and waste oil to Chapter 266a, Subchapter E if the mixtures are being burned for energy recovery and to the regulations applicable to all CESQG hazardous waste which are found at 40 CFR 261.5 and § 261a.5 if the mixtures will be recycled or reused.

In sum, several provisions of the hazardous waste regulations apply to waste oil. 40 CFR 261.6(a)(4) and § 261a.6(a) regulate waste oil that is hazardous solely due to a characteristic and that is to be recycled or reused. If this type of waste oil is destined to be burned for energy recovery, § 261a.6(a) requires the operator to comply with Chapter 266a, Subchapter E. If this type of waste oil is not destined to be burned for energy recovery, § 261a.6(a) requires the operator to comply with the residual waste regulations. In the proposed rulemaking, § 261a.3(b) set forth the same requirements that have been relocated to 40 CFR 261.6(a)(4) and § 261a.6(a) of the final-form regulations. Chapter 266a, Subchapter E continues to direct the operator dealing with waste oil that is destined to be burned for energy recovery to the applicable provisions of the regulations. Mixtures of CESQG waste and waste oil are regulated under 40 CFR 261.5 and § 261a.5. In accordance with 40 CFR 261.5(j), if mixtures of CESQG waste and waste oil are burned for energy recovery, the mixtures are subject to Chapter 266a, Subchapter E. The final-form regulations are not intended to change the substance of Chapter 266a, Subchapter E. The changes made to Chapter 266a, Subchapter E are intended to correct cross references and to take into account the adoption of the boiler and industrial furnace rule, incorporated by reference in Chapter 266a, Subchapter H (relating to hazardous waste burned in boilers and industrial furnaces). The Department has proposed a rulemaking specifically for waste oil at 29 Pa.B. 1975. Any substantive changes to the waste oil provisions will be made through that rulemaking.

*Recyclable Materials Utilized for Precious Metal Recovery—Chapter 266a, Subchapter F*

The Board proposed to incorporate by reference the Federal provisions for precious metal recovery. In addition, the proposed rulemaking required operators of precious metals recovery facilities to obtain treatment permits under the proposed language of § 261a.6 (relating to recyclable materials). After further consideration, the Board has determined that requiring individual permits for these facilities discourages recycling of precious met-

als. Therefore, the Board has added a new permit by rule in § 270a.60(b) for facilities that recover precious metals. This permit by rule will satisfy the SWMA requirement for a permit without imposing a burden on the facilities that will discourage them from recycling precious metals. In addition to the permit by rule for precious metals recovery facilities, § 266a.70 (relating to applicability and requirements) grants to transporters transporting recyclable materials utilized for precious metals recovery a license for the transportation of the recyclable materials if they comply with 40 CFR 263.11 (relating to EPA identification number) and § 263a.23 (relating to hazardous waste transportation fees).

*Spent Lead-Acid Batteries Being Reclaimed—Chapter 266a, Subchapter G*

The final-form rulemaking clarifies that facilities that treat spent lead-acid batteries prior to reclamation shall comply with § 261a.6 (relating to recyclable materials) unless the facilities qualify for the permit by rule for battery reclamation found in § 270a.60(b).

*Interim Status Standards for Burners—§ 266a.103*

One commentator stated that the proposed 8,000 Btu/lb. minimum heating value is better than the weak Federal standard. The commentator felt that the Board was correct in identifying the need for assurance that hazardous wastes are being burned for energy recovery, rather than disposal.

The Board has determined that substituting an 8,000 Btu/lb. minimum heating value for the Federal 5,000 Btu/lb. minimum heating value is no longer relevant for interim status boiler and industrial furnaces (BIFs) in this Commonwealth. The substitution proposed in § 266a.103(1) (relating to interim status standards for burners) was applicable only to interim status BIFs that have not certified compliance with certain emission standards or received a final permit. After further research, the Department found that all interim status BIF facilities in this Commonwealth have certified compliance with the EPA, meaning that all of the Commonwealth's interim status BIF facilities meet specified emissions standards established by the EPA. Furthermore, there will be no additional interim status BIF facilities in this Commonwealth since the owners or operators of facilities wishing to initiate burning or processing of hazardous waste in a BIF unit shall first obtain a permit.

The 8,000 Btu/lb. minimum heating value substitutions proposed in § 266a.108 (relating to small quantity onsite burners) will not be included in the final-form regulations. After further review of the incorporated Federal provisions and the existing regulations, the Board found that the existing regulations in § 266.30(f) (relating to applicability for hazardous waste burned for energy recovery) that were proposed to be deleted allow operators to use a 5,000 Btu/lb. minimum heating value as long as the operator complies with 40 CFR 266.104–266.112 (relating to hazardous waste burned in boilers and industrial furnaces). In the final-form regulations, small quantity onsite burners are required to comply with 40 CFR 266.108 (relating to small quantity onsite burner exemption), which the Department has determined to provide adequate regulation for onsite burners. Therefore, the Board is deleting from the final-form regulations proposed § 266a.108 (relating to small quantity onsite burner exemption).

*Hazardous Waste Permit Program—Chapter 270a*

The proposed rulemaking incorporated by reference the Federal permitting program and retained many of the

existing Commonwealth permitting procedural requirements. After further review, the Board has found that many of the incorporated provisions duplicate existing Commonwealth requirements that were included in the proposed rulemaking. The Board also determined that some of the procedural requirements that were retained in the proposed rulemaking should have been relocated to sections that dealt more directly with the substantive requirements that were subject to the procedural requirements. Therefore, the final-form regulations do not include those provisions that are duplicative of Federal requirements that the final-form regulations incorporate by reference. In addition, the Board has relocated to different section numbers some of the procedural requirements that were included in the proposed rulemaking so that the procedural requirements can be found in the same section as the relevant substantive requirements.

*Effect of a permit—§ 270a.4*

The EPA also commented that the Commonwealth has excluded 40 CFR 270.4 (relating to effect of a permit) from its incorporation by reference of 40 CFR Part 270 (relating to the hazardous waste permit program). This provision addresses the effect of a permit. The EPA stated that the Federal section is required for authorization; and therefore, the Commonwealth is less stringent. The Board has included this provision in the Commonwealth's regulations. However the final-form regulations clarify that nothing contained in the incorporated language prohibits the Department from taking any enforcement action under section 602 of the SWMA (35 P. S. § 6018.602), which authorizes the Department to take enforcement actions against permitted facilities for any violation of the SWMA or any regulations promulgated under the SWMA.

*General application requirements and permit issuance procedures—§ 270a.10*

The EPA commented that the Commonwealth is required to include procedural requirements that are equivalent to certain procedural requirements found in 40 CFR Part 124 (relating to procedures for decision making). The Board has reviewed the essential procedural requirements found in 40 CFR Part 124 and has included the text rather than an incorporation by reference of those requirements. The number of essential provisions contained in Part 124 are minimal and the cross reference problems that resulted from incorporating these requirements into the Commonwealth hazardous waste regulatory numbering scheme were most easily resolved by including the text of those requirements. In response to the EPA comments, the Board has substituted applicable Commonwealth citations for any Part 124 citations that are included in the incorporated language. The essential 40 CFR Part 124 text is found in the final-form regulations in § 270a.10 (relating to general application requirements and permit issuance procedures).

*Classification of Permit Modification—Appendix I for 40 CFR 270.42*

The final-form regulations incorporate by reference the Federal classification system for permit modifications and the Federal public notice requirements for those permit modifications. One commentator noted that Appendix I would increase the scope of permit changes that could be instituted by the Department and the permittee, with no effective public participation. The commentator felt that without public notice this provision would be abused. The existing Commonwealth regulations have minor and major modifications. The Federal permit modifications are divided into three classes. Class 1 modifications are the

most minor modifications and are subject to less stringent notification requirements than Class 2 or Class 3 permit modifications. The Commonwealth's existing minor modifications are essentially the same as the Federal class 1 modifications. All three classes of permit modification require the permittee to notify everyone on the facility mailing list (including local and county government) of the proposal. In the minor modification (Class1), anyone can request the Secretary of the Department to review and deny the modification request. Class 2 and 3 modification procedures call for full public participation, including publishing the notice in a major local newspaper, announcement of at least a 45-day comment period, and announcement of a public meeting and a public hearing, if requested. The Department believes that adopting this appendix by reference will increase public participation since the current regulations do not require the Department or the permittee to notify the public of a minor permit modification.

#### *Permits by Rule—§ 270a.60*

The Board received many comments regarding its permits by rule. The Commonwealth uses permits by rule in many instances for which the Commonwealth is more stringent than the Federal government. Without the permits by rule, the Commonwealth would require individual permits. Consequently, the permits by rule are intended to assure proper management of hazardous waste without causing overly burdensome regulation. After reviewing the proposed rulemaking and comments received, the final-form regulations have been modified. In addition to the changes made to this section in response to the comments summarized as follows, the permit by rule for petroleum refining facilities refining hazardous waste along with normal process streams to produce petroleum products (proposed § 270a.60(b)(4)) has been deleted in the final-form regulations. Since the refinery is the actual reclamation unit, there is no need for a permit or permit by rule; any treatment conducted on the hazardous waste prior to introduction into the refinery could be covered under the permit by rule for treatment prior to onsite reclamation.

One commentator felt that permits by rule serve the permitted industries by providing the illusion of regulation instead of serving the public by providing effective regulation. The commentator thought that abolishing the permits by rule and requiring individual permits would be better than retaining them.

In general, permit by rule is available under the Commonwealth's regulations to the owners or operators of certain hazardous waste management facilities that are exempt from permit and other requirements under Federal hazardous waste regulations. Permit by rule satisfies the SWMA requirement for permitting hazardous waste storage, treatment or disposal facilities and provides adequate regulatory oversight. The owners or operators of permit by rule facilities shall notify the Department of their activity and meet some basic facility standards. The notification requirement alone is important to the Department so that inspectors may schedule and prioritize periodic visits to a permit by rule facility. In situations where a facility is not in compliance with the applicable permit by rule requirements, particularly to the extent that harm or threat of harm to people or the environment is present, the Department may require the owners or operators of these facilities to obtain an individual permit.

Several commentators felt that the Commonwealth should adopt the Federal regulation in 40 CFR

270.1(c)(2)(v) (relating to purpose and scope) which specifically excludes wastewater treatment units that treat hazardous waste, from RCRA permitting and RCRA permit by rule requirements as long as the wastewater treatment unit is already regulated under section 402 or 307(b) of the Clean Water Act. A commentator stated that the Federal exclusion from permitting and permit by rule requirements for units regulated under the Clean Water Act eliminates duplication of effort by different departments of the Federal agency and allows the regulated community to focus its compliance efforts on the regulations that are most appropriate to the operating unit. Concern was also expressed over the additional recordkeeping requirements for operators as well as additional inspection requirements for State hazardous waste inspectors. A commentator stated that if the SWMA requires permit by rule for units such as elementary neutralization and wastewater treatment units, the regulations should clarify that wastes to these units do not count in determining if the site is a large quantity generator.

Permit by rule is available to wastewater treatment units, and certain other hazardous waste management facilities, to satisfy the Commonwealth SWMA requirement for permitting hazardous waste storage, treatment or disposal facilities. The Department has examined the permit by rule provisions of proposed § 270a.60 and determined that they will reduce or streamline many requirements that would otherwise be required by an individual permit. With regard to CESQG quantity determinations, the Federal regulation in 40 CFR 261.5(c)(2) (relating to CESQGs), incorporated by reference with this rulemaking, clearly states that generator quantity determinations do not need to include hazardous wastes that are managed in onsite elementary neutralization or wastewater treatment units.

Several commentators noted that § 270a.60(b)(1)(i) of the proposed rulemaking retains the Commonwealth's prohibition against intracompany shipments of hazardous wastes to an elementary neutralization or wastewater treatment permit by rule facility. This limits a facility's ability to accept hazardous wastewaters from other company owned locations that are too small to have their own facilities. The prohibition does not exist in neighboring states. For instance, the commentator pointed out, member companies can send hazardous wastes from their Commonwealth plants to Ohio plants for treatment, but cannot receive intracompany shipments from either Ohio or this Commonwealth. This type of exception to the Federal rules is typical of the discrepancies between the Commonwealth's rules and the Federal rules that were intended to be eliminated by the regulatory basics effort. This section should be consistent with Federal regulations and allow intracompany shipments of wastes for treatment. Conforming to the Federal elementary neutralization/wastewater treatment unit provisions will afford Commonwealth business the opportunity to use existing investment to reduce operating costs, and reduce risks associated with transporting these wastes to neighboring states. It should be noted the final-form regulations do allow intracompany transfers for reclamation.

In the final-form regulations changes have been made to the elementary neutralization and wastewater treatment unit permit by rule provisions to allow receipt of offsite hazardous waste shipments for treatment at these facilities, if the conditions of the permit by rule are not violated (for example, compliance with an NPDES permit or pretreatment requirements is maintained). To prevent classification as a commercial hazardous waste treatment



facility and consequential application of the siting, fee assessment and other requirements of the HSCA, the permit by rule facilities shall be limited to receipt of wastes from other facilities operated or owned by the same generator. Limiting offsite wastes in this manner will also provide additional assurance that the owner or operator of the permit by rule facility has a better knowledge of the physical and chemical character and composition of the wastes being treated at the facility.

One commentator questioned whether operators would continue to be allowed to recycle oily wastewaters from other facilities they own and operate under proposed § 270a.60(b)(5)(iii) (relating to onsite reclamation) since the proposed rulemaking does not define onsite as including materials generated at facilities owned and operated by the same generator. If this is the case, the commentator requests that a provision allowing recycling of materials generated at facilities owned and operated by the same generator be included in the new regulations. Proposed § 270a.60(b)(5)(iii) provided for the reclamation of materials generated at other facilities operated or owned by the same generator at an onsite reclamation permit by rule facility. This is included in the final-form regulations as well.

The EPA commented that the permit by rule for facilities storing hazardous waste onsite in tanks, containers or containment buildings and reclaiming them under the proposed § 270a.60(b)(6) is less stringent than Federal requirements. The EPA noted that, according to 40 CFR 261.6(c)(1) (relating to recyclable materials), these facilities are subject to the permitting requirements unless specifically exempted under 40 CFR 261.6(a)(3). The Board agrees that the permit by rule proposed in § 270a.60(b)(6) for storage of hazardous waste onsite prior to reclamation under the onsite reclamation permit by rule provisions of § 270a.60(b)(5) could be less stringent than Federal storage permit requirements. The storage permit by rule provision has been dropped from the final-form regulations.

The EPA also commented that the variance from any permits by rule described in proposed § 270a.60(b)(3)—(6) would make the Commonwealth's program less stringent than the Federal program if the variance could apply to requirements which are equivalent to or less stringent than the Federal Code. To be as stringent as the Federal program, the EPA noted that the Commonwealth may only grant a variance from requirements that are more stringent than the Federal requirements. The Board has revised the permit by rule provisions of proposed § 270a.60 to insure that they only apply to hazardous waste activities that are exempt from Federal permit requirements.

#### *Minor Changes*

In addition to the above revisions, the Board has made minor changes to the following sections: §§ 260a.1—260a.3, 260a.10, 261a.1, 261a.3, 261a.5, 261a.7, 262a.10, 262a.12, 262a.20—262a.23, 262a.41, 262a.55—262a.57, 262a.80, 263a.10, 263a.11, 263a.13, 263a.20, 263a.30, 264a.1, 264a.11, 264a.12, 264a.75, 264a.96, 264a.147, 264a.149, 264a.150, 264a.153, 264a.156—264a.160, 264a.166, 264a.191, 264a.221, 264a.251, 264a.301, 264a.570, 265a.1, 265a.11, 265a.12, 265a.56, 265a.71, 265a.75, 265a.141, 265a.147, 265a.149, 265a.150, 265a.153, 265a.156—265a.160, 265a.191, 265a.193, 265a.194, 266a.40, 266a.41, 266a.108, 266b.30, 266b.50, 266b.60, 268a.1, 270a.2—270a.6, 270a.10, 270a.12, 270a.60, 270a.64, 270a.72, 270a.81 and 270a.82.

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

Executive Order 1996-1 requires a cost/benefit analysis of the final-form rulemaking.

##### *Benefits*

The final-form regulations will incorporate by reference the Federal regulatory requirements for hazardous waste management and add Commonwealth requirements to the Federal requirements in instances in which the Department has identified a compelling state interest that requires the Commonwealth to modify or add to the Federal requirements. As a result of the incorporation by reference, the final-form regulations will align more closely the text and numbering system of the Commonwealth regulations found in Chapters 260a—266a, 266b and 268a—270a with the Federal numbering system found in 40 CFR Parts 260—273. In addition, the final-form regulations will eliminate the confusion caused by using two different sets of regulations—those used by EPA and those used by the Department—for managing hazardous waste in this Commonwealth. Since most states have hazardous waste regulations that closely resemble the Federal regulations, amending the Commonwealth's hazardous waste regulations to follow the Federal regulations will allow companies to comply more easily on an interstate basis. In addition, most of the Commonwealth's regulations mirror the intent of the Federal rules, and many Commonwealth regulations use the same language that the Federal rules use. Most of the Commonwealth requirements that have Federal analogs use the same section numbers as the Federal numbering system. Consequently, all classes of hazardous waste generators; transporters; and treatment, storage and disposal facilities will benefit from the regulatory changes since the final-form regulations provide the regulated community with consistency between the State and Federal regulatory requirements, language and numbering systems.

##### *Compliance Costs*

Although this is a large and comprehensive rulemaking, it imposes very few additional costs on the regulated community and the Department. Since the overall purpose of this rulemaking is to align the Department's hazardous waste regulations with the Federal hazardous waste regulations, the Department expects a decrease in the overall cost of compliance since the regulated community will need to comply with only one set of regulations rather than the two sets with which it must currently comply.

The regulated community will realize an estimated \$400,000 of additional savings through the amendment of the manifest regulation to require fewer manifest copies than the current eight part manifest. The savings will result from reduced clerical and mailing costs. Costs to the Commonwealth will also be reduced as a result of this amendment. The reduction in the amount of mail handled will be significant. The number of manifests scanned and data entered into the Department computer system will be reduced by approximately 50%. This will result in a savings to the Department of an estimated \$30,000 through reduced mail handling and data entry costs associated with reduced manifesting requirements.

Newly permitted facilities or facilities seeking permit renewals will no longer be required to submit Module 1 forms. Therefore, operators will no longer be required to pay a fee to amend their Module 1 forms every time that they receive a new waste stream. The final-form regulations allow permit applicants to submit information on

their own forms rather than on the Department's Module 1 forms. The Department estimates that this will save the regulated community \$35,000 annually. These savings would be a direct result of the elimination of the requirement to transcribe information from an operator's form to a Department form.

#### *Compliance Assistance Plan*

The Department will assist the regulated community by developing a series of fact sheets explaining any changes to the final-form regulations, and how the changes impact on specific groups within the regulated community. In addition, the Department intends to meet with industry groups to develop workshops to explain the regulatory changes and how the changes affect particular types of industry. Department field staff will also provide compliance assistance during routine facility inspections.

The Department intends to develop a series of compliance guides customized for specific groups of entities affected by this final-form regulations. These compliance guides will be a printed version of the full text of the Federal regulations with any Commonwealth changes made to the Federal regulations incorporated into the text. Therefore, the Department expects most operators to be able to use the guides as stand alone documents that synthesize all of the Federal and Commonwealth requirements into one guide. The Department expects to publish different guides to target the needs of specific groups. For example, there could be a guide for each of the following groups: CESQGs, small quantity generators, generators, transporters, onsite reclamation facilities and permit by rule facilities. The guides, as well as the fact sheets and any other written material the Department publishes, will be available on the worldwide web.

#### *Paperwork Requirements*

These final-form regulations will result in a net reduction in paperwork requirements. Manifest copies will be reduced resulting in substantial paperwork reduction and reduced filing, storage and mailing costs. An additional reduction in paperwork will result from the reduced groundwater monitoring requirements. These forms will only have to be completed and mailed once per year, as opposed to the current requirement that operators complete and mail these forms twice per year. Allowing industry to use their own forms in place of the Department's Module 1 forms will also reduce paperwork requirements. Transcription and storage of duplicate records will be eliminated. No additional forms are required by these final-form regulations.

#### *G. Pollution Prevention*

In keeping with Governor Ridge's interest in encouraging pollution prevention solutions to environmental problems, these final-form regulations have incorporated the following provision and incentive to meet that goal: § 262a.100 (relating to source reduction strategy) provides that any person or municipality that generates hazardous waste shall prepare a source reduction strategy that identifies the methods and procedures that the person or municipality intends to implement to reduce the amount of hazardous waste generated. The incentive for a person or municipality to implement their source reduction strategy is to save money in hazardous waste management costs, protect employee health and safety, lower insurance costs and protect the environment by reducing the amount of hazardous waste generated.

#### *H. Sunset Review*

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the

Department to determine whether the regulations effectively fulfill the goals for which they were intended.

#### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 23, 1999, the Department submitted a copy of this final-form rulemaking to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were approved by the House and Senate Environmental Resources and Energy Committees on March 15, 1999. IRRC met on March 25, 1999, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745a.5(e)).

#### *J. Findings of the Board*

The Board finds that:

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

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 27 Pa.B. 6407.

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

#### *K. Order of the Board*

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

(a) The regulations of the Department, 25 Pa. Code, are amended by:

(1) Deleting §§ 260.1, 260.2, 260.11, 260.21, 260.22, 261.1—261.7, 261.9—261.11, 261.20—261.24, 261.30—261.34, 261.41, 262.10—262.13, 262.20, 262.22, 262.23, 262.30, 262.33, 262.34, 262.40—262.43, 262.45, 262.46, 262.50, 262.53, 262.55, 262.60, 262.70, 262.80, 263.10, 263.11, 263.13, 263.20—263.27, 263.30—263.32, 264.1, 264.11—264.17, 264.31—264.35, 264.37, 264.51—264.56, 264.70—264.82, 264.90, 264.91, 264.96—264.100, 264.110—264.115, 264.117—264.119, 264.140, 264.171—264.180, 264.190—264.199, 264.220—264.225, 264.227—264.231, 264.250—264.258, 264.270—264.273, 264.276, 264.278—264.282, 264.300—264.305, 264.309, 264.310, 264.312—264.316, 264.340—264.345, 264.347, 264.351—264.353, 264.500—264.505, 264.520—264.522, 264.600—264.603, Appendices A—E, 265.1, 265.11—265.17, 265.31—265.35, 265.37, 265.51—265.56, 265.70—265.82, 265.90—265.94, 265.110—265.115, 265.117—265.119, 265.140, 265.142, 265.144, 265.171—265.174, 265.176—265.178, 265.190—265.201, 265.220, 265.222, 265.223, 265.225, 265.226, 265.228—265.230, 265.250—265.253, 265.256—265.258, 265.270, 265.272, 265.273, 275.276, 265.278—265.282, 265.300, 265.302, 265.309, 265.310,

265.312—265.315, 265.340—265.342, 265.345, 265.347, 265.351, 265.370, 265.373, 265.375, 265.377, 265.381, 265.382, 265.400—265.406, 265.430—265.433, 265.435, 265.440—265.448, 265.450—265.452, 265.460—265.462, 265.470, 265.500—265.505, 265.520—265.522, 266.20—266.24, 266.30—266.35, 266.40—266.44, 266.70, 266.80, 266.90, 266.100—266.104, 266.201—266.206, 266.210—266.220, 266.230—266.240, 266.250—266.256, 266.260—266.262, 266.270, 266.280—266.283, 267.1, 267.2, 267.11—267.30, 267.41—267.46, 267.51—267.59, 267.61, 267.62, 269.1, 269.11—269.14, 269.21—269.29, 269.41—269.50, 269.101—269.103, 269.111, 269.121—269.124, 269.131, 269.132, 269.141—269.143, 269.151—269.155, 269.161—269.163, 269.201, 269.211, 269.221, 269.231, 270.1—270.4, 270.11—270.13, 270.21, 270.22, 270.31—270.33, 270.41—270.43, 270.60; and by

(2) Adding §§ 260a.1—260a.3, 260a.10, 260a.20, 260a.30, 260a.1, 260a.3—260a.7, 261a.1, 261a.3—261a.7, 262a.10, 262a.12, 262a.20—262a.23, 262a.41, 262a.42, 262a.55—262a.57, 262a.80, 262a.100, 263a.10—263a.13, 263a.20, 263a.21, 263a.23—263a.26, 263a.30, 263a.32, 264a.1, 264a.11—264a.13, 264a.15, 264a.18, 264a.56, 264a.71, 264a.75, 264a.78—264a.83, 264a.97, 264a.101, 264a.115, 264a.120, 264a.141, 264a.143, 264a.145, 264a.147—264a.151; 264a.153—264a.160, 264a.162—264a.169, 264a.173, 264a.180, 264a.191, 264a.193—264a.195, 264a.221, 264a.251, 264a.273, 264a.276, 264a.301, 264a.570, 264a.1100, 264a.1101, 265a.1, 265a.11—265a.13, 265a.15, 265a.18, 265a.56, 265a.71, 265a.75, 265a.78—265a.83, 265a.115, 265a.120, 265a.141, 265a.143, 265a.145, 265a.147—265a.150, 265a.153—265a.160, 265a.162—265a.169, 265a.173, 265a.179, 265a.191, 265a.193—265a.195, 265a.382, 266a.20, 266a.40—266a.44, 266a.70, 266a.80, 266a.100, 266b.1, 266b.10, 266b.30, 266b.50, 266b.60, 268a.1, 269a.1, 269a.11—269a.14, 269a.21—269a.29, 269a.41—269a.50, 269a.101—269a.103, 269a.111, 269a.121—269a.124, 269a.131, 269a.132, 269a.141—269a.143, 269a.151—269a.155, 269a.161—269a.163, 269a.201, 269a.211, 269a.221, 269a.231, 270a.1—270a.6, 270a.10, 270a.12, 270a.29, 270a.32, 270a.41, 270a.42, 270a.43, 270a.51, 270a.60, 270a.64, 270a.72 and 270a.80—270a.84 to read as set forth in Annex A.

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

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

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

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

JAMES M. SEIF,  
Chairperson

**Fiscal Note:** Fiscal Note 7-328 remains valid for the final adoption of the subject regulations.

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 1957 (April 10, 1999).)

**Annex A**

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

**Subpart D. ENVIRONMENTAL HEALTH AND SAFETY**

**ARTICLE VII. HAZARDOUS WASTE MANAGEMENT**

**CHAPTER 260. (Reserved).**

§ 260.1. (Reserved).

§ 260.2. (Reserved).

§ 260.11. (Reserved).

§ 260.21. (Reserved).

§ 260.22. (Reserved).

**CHAPTER 260a. HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

Subchap.  
A. GENERAL  
B. DEFINITIONS  
C. RULEMAKING PETITIONS

**Subchapter A. GENERAL**

Sec.  
260a.1. Incorporation by reference, purpose, scope and applicability.  
260a.2. Availability of information.  
260a.3. Terminology and citations related to Federal Regulations.

**§ 260a.1. Incorporation by reference, purpose, scope and applicability.**

(a) Except as expressly provided in this chapter, 40 CFR Part 260 and its appendices (relating to hazardous waste management system: general) are incorporated by reference.

(b) Regarding the requirements incorporated by reference, nothing contained in this article relieves or limits a person or municipality who generates, transports, stores, treats or disposes of hazardous waste from complying with the Pennsylvania law, including: The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305); the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.31); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); the Pennsylvania Bituminous Coal Mine Act (52 P. S. §§ 1406.1—1406.21); the Pennsylvania Anthracite Coal Mine Act (52 P. S. §§ 70-101—70-1405); and the act of July 9, 1976 (P. L. 931, No. 178) (52 P. S. §§ 27.7-1—27.7-9).

**§ 260a.2. Availability of information.**

40 CFR 260.2 (relating to availability of information) is not incorporated by reference.

**§ 260a.3. Terminology and citations related to Federal regulations.**

(a) For purposes of interfacing with 40 CFR Parts 260—279, the following terms apply, unless otherwise noted:

(1) The terms “Administrator,” “Regional Administrator,” “Assistant Administrator,” “Assistant Administrator for Solid Waste and Emergency Response” and “State Director” are substituted with “Department.”

(2) When referring to an operating permit or to the Federal hazardous waste program, “Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901—6986),”

"RCRA," "Subtitle C of RCRA," "RCRA Subtitle C" or "Subtitle C" is substituted with the act.

(3) "Environmental Protection Agency" or "EPA" and all names or associated acronyms are substituted with "Department" except when referring to the terms "EPA Form," "EPA Identification Number," "EPA Acknowledgment of Consent," "EPA Hazardous Waste Number," "EPA publication," "EPA publication number," "EPA Test Methods" and "EPA Guidance" including any mailing addresses associated with these terms.

(4) "Used oil" is substituted with "waste oil."

(5) "State," "authorized state," "approved state" or "approved program" is substituted with "the Commonwealth."

(6) Whenever the regulations require compliance with procedures found in 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program), compliance is accomplished by the procedures found in Chapter 270a (relating to hazardous waste permit program).

(7) The Commonwealth equivalent of 40 CFR Part 273 (relating to universal waste management) is found in Chapter 266b (relating to universal waste management).

(8) The Commonwealth equivalent of 40 CFR Part 279 (relating to standards for the management of used oil) is found in Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery).

(b) Federal regulations that are cited in this article or that are cross referenced in the Federal regulations incorporated by reference include any Pennsylvania modifications made to those Federal regulations.

(c) References to 40 CFR Part 124 (relating to procedures for decision making) found in Federal regulations incorporated by reference are substituted with Pennsylvania procedures found in Chapter 270a.

(d) References to the "Department of Transportation" or "DOT" means the United States Department of Transportation.

(e) The effective date for the *Code of Federal Regulations* incorporated by reference in this article is May 1, 1999. The incorporation by reference includes any subsequent modifications and additions to the CFR incorporated in this article.

### Subchapter B. DEFINITIONS

Sec.  
260a.10. Definitions.

#### § 260a.10. Definitions.

A term defined in this section replaces the definition of the term in 40 CFR 260.10, or, in situations for which no term exists in 40 CFR 260.10, the term shall be defined in accordance with this section. The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporated definition of "EPA region," "State," "United States," "Administrator" and "Regional Administrator."

*Act*—The Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

*Disposal*—The incineration, deposition, injection, dumping, spilling, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of this Commonwealth.

*Existing tank system or existing component*—The Federal definition for "existing tank system or existing component" in 40 CFR 260.10 is incorporated by reference except that the date referenced is January 16, 1993, instead of July 14, 1986.

*Facility*—The land, structures and other appurtenances or improvements where municipal or residual waste disposal or processing is permitted or takes place, or where hazardous waste is treated, stored or disposed.

*Fund*—The Host Municipalities Fund.

*Hazardous Sites Cleanup Act*—The Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).

*Hazardous Sites Cleanup Fund*—The fund established by section 901 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.901).

*Host municipality*—A municipality, other than a county, where a qualifying facility is located, either in whole or in part, within its established corporate boundaries.

*Management or hazardous waste management*—The entire process, or a part thereof, of storage, collection, transportation, processing, treatment and disposal of solid wastes by a person engaging in the process. The term "hazardous waste management" refers to management of hazardous waste.

*New hazardous waste management facility or new facility*—The Federal definition for "new hazardous waste management facility or new facility" in 40 CFR 260.10 is incorporated by reference except that the date referenced is November 19, 1980, instead of October 21, 1976.

*New tank system or new tank component*—The Federal definition for "new tank system or new tank component" in 40 CFR 260.10 is incorporated by reference except that the date referenced is January 16, 1993, instead of July 14, 1986.

*Pennsylvania hazardous waste facilities plan*—A plan required by sections 104(14) and 105(f) of the act (35 P. S. §§ 6018.104(14) and 6018.105(f)) and adopted by the EQB which identifies current and future hazardous waste treatment and disposal facilities necessary for the proper management of hazardous waste in this Commonwealth.

*Person*—An individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, Federal government or agency, State institution and agency (including, but not limited to, the Department of General Services and the State Public School Buildings Authority), or other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provision of the act prescribing a fine, imprisonment or penalty, or a combination of the foregoing, the term includes the officers and directors of a corporation or other legal entity having officers and directors.

*Qualifying facility*—A commercial hazardous waste treatment or disposal facility, or expansion to an existing hazardous waste treatment or disposal facility, which was permitted after December 18, 1988, is operating, and fulfills the commercial hazardous waste treatment or disposal needs identified in the Pennsylvania Hazardous Waste Facilities Plan.

*RCRA*—The Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6901—6986).

*Registered professional engineer or professional engineer*—An engineer registered to practice engineering in this Commonwealth.

*Registered professional geologist or professional geologist*—A geologist registered to practice geology in this Commonwealth.

*Responsible official*—For corporations, a corporate officer; for limited partnerships, a general partner; for all other partnerships, a partner; for a sole proprietorship, the proprietor; for a municipal, state or Federal authority or agency, an executive officer or ranking elected official responsible for compliance of the hazardous waste activities and facilities of the authority or agency with all applicable rules and regulations.

*Source reduction*—The reduction or elimination of the quantity or toxicity of hazardous waste generated. Source reduction may be achieved through changes within the production process, including process modifications, feedstock substitutions, improvements in feedstock purity, shipping and packing modifications, housekeeping and management practices, increases in the efficiency of machinery and recycling within a process. The term does not include dewatering, compaction, reclamation, treatment, or the use or reuse of waste.

*State manifest document number*—The state abbreviation, the letter and the unique number assigned to the manifest, usually preprinted on the form, for recording and reporting purposes.

*Storage*—The containment of a waste on a temporary basis that does not constitute disposal of the waste. It will be presumed that the containment of waste in excess of 1 year constitutes disposal. This presumption can be overcome by clear and convincing evidence to the contrary.

*Transportation*—The offsite removal of solid waste at any time after generation.

**Subchapter C. RULEMAKING PETITIONS**

- Sec. 260a.20. Rulemaking petitions.
- 260a.30. Variances from classification as a solid waste.

**§ 260a.20. Rulemaking petitions.**

Each petition shall be submitted in accordance with Chapter 23 (relating to Environmental Quality Board—policy for processing petitions—statement of policy) instead of the procedures in 40 CFR 260.20(b)—(e) (relating to general).

**§ 260a.30. Variances from classification as a solid waste.**

The coproduct transition scheme is as follows:

(1) Those materials previously regulated as coproducts prior to May 1, 1999, and that are not otherwise excluded as solid wastes, continue to be regulated as if excluded from classification as a solid waste until a variance from classification as a solid waste under 40 CFR 260.30 (relating to variances from classification as a solid waste) is acted upon by the Department. The request for a variance shall be filed by May 1, 2001.

(2) To qualify under paragraph (1), a person producing, selling, transferring, possessing or using a material as a coproduct not exempt from regulation under other provisions of this article shall submit by May 1, 2001, a

written notification to the Department that the exemption in paragraph (1) applies to the person's activity.

**CHAPTER 261. (Reserved)**

**§§ 261.1—261.7. (Reserved).**

**§ 261.9. (Reserved).**

**§§ 261.20—261.24. (Reserved).**

**§§ 261.30—261.34. (Reserved).**

**§ 261.41. (Reserved).**

**CHAPTER 261a. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

**Subchap. A. GENERAL**

**Subchapter A. GENERAL**

- Sec. 261a.1. Incorporation by reference, purpose and scope.
- 261a.3. Definition of "hazardous waste."
- 261a.4. Exclusions.
- 261a.5. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.
- 261a.6. Requirements for recyclable materials.
- 261a.7. Residues of hazardous waste in empty containers.

**§ 261a.1. Incorporation by reference, purpose and scope.**

Except as expressly provided in this chapter, 40 CFR Part 261 and its appendices (relating to identification and listing of hazardous waste) are incorporated by reference. The substitution of terms in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 261.4(f)(1), 261.10 and 261.11 (relating to notification of treatability studies; criteria for identifying the characteristics of hazardous waste; and criteria for listing hazardous waste). The substitution of terms in § 260a.3(a)(3) does not apply to Appendix IX (relating to wastes excluded under §§ 260.20 and 260.22) of the CFR.

**§ 261a.3. Definition of "hazardous waste."**

40 CFR 261.3(c)(2)(ii)(C) (relating to certain non-wastewater residues such as slag resulting from HTMR processing of K061, K062 or F006 waste) is not incorporated by reference.

**§ 261a.4. Exclusions.**

In addition to the requirements incorporated by reference, a copy of the written state agreement required by 40 CFR 261.4(b)(11)(ii) (relating to exclusions) that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed for free phase hydrocarbon recovery operations shall be submitted to: Pennsylvania Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, Post Office Box 8471, Harrisburg, Pennsylvania 17105-8471.

**§ 261a.5. Special requirements for hazardous waste generated by conditionally exempt small quantity generators.**

(a) The reference to 40 CFR Part 279 in 40 CFR 261.5(c)(4) and (j) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) is replaced with Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery).

(b) In addition to the requirements incorporated by reference, a conditionally exempt quantity generator may not dispose of hazardous waste in a municipal or residual waste landfill in this Commonwealth.

(c) A conditionally exempt small quantity generator complying with this subchapter and 40 CFR 261.5 is deemed to have a license for the transportation of those conditionally exempt small quantity generator wastes generated by the generator's own operation.

**§ 261a.6. Requirements for recyclable materials.**

(a) The reference to "Part 279 of this chapter" in 40 CFR 261.6(a)(4) (relating to requirements for recyclable materials) is replaced with one of the following:

(1) The residual waste regulations in Article IX (relating to residual waste management) if the waste oil is being recycled or reused in a manner other than burning for energy recovery.

(2) Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery) if the waste oil is destined to be burned for energy recovery.

(b) 40 CFR 261.6(c) is not incorporated by reference.

(c) Instead of 40 CFR 261.6(c), owners and operators of facilities that store or treat recyclable materials are regulated under all applicable and incorporated provisions of 40 CFR Parts 264 and 265, Subparts A—L, AA, BB, CC and DD; 40 CFR Part 264 Subpart X; 40 CFR Parts 266 and 270, except as provided in 40 CFR 261.6(a).

(1) In addition, owners and operators of facilities regulated under this section are subject to the applicable provisions of:

- (i) Chapter 264a and Chapter 265a, Subchapters A—L.
- (ii) Chapter 264a, Subchapters X and DD
- (iii) Chapters 266a and 270a.

(2) Recycling processes that are not treatment are exempt from regulation except as provided in 40 CFR § 261.6(d).

(3) The sizing, shaping or sorting of recyclable materials will not be considered treatment for purposes of this section.

(d) The requirements of §§ 270a.3, 264a.82, 264a.83, 265a.82 and 265a.83 do not apply to facilities or those portions of facilities that store or treat recyclable materials.

**§ 261a.7. Residues of hazardous waste in empty containers.**

(a) Hazardous waste removed from either an empty container or an inner liner removed from an empty container, as defined in 40 CFR 261.7(b) (relating to residues of hazardous waste in empty containers), is subject to Chapters 261a—265a, 268a and 270a.

(b) For purposes of this section, the term "containers" includes tanks.

**CHAPTER 262. (Reserved)**

**§§ 262.10—261.13. (Reserved).**

**§ 262.20. (Reserved).**

**§ 262.23. (Reserved).**

**§ 262.30. (Reserved).**

**§ 262.33. (Reserved).**

**§ 262.34. (Reserved).**

**§§ 262.40—262.43. (Reserved).**

**§ 262.45. (Reserved).**

**§ 262.46. (Reserved).**

**§ 262.50. (Reserved).**

**§ 262.53. (Reserved).**

**§ 262.55. (Reserved).**

**§ 262.60. (Reserved).**

**§ 262.70. (Reserved).**

**§ 262.80. (Reserved).**

**CHAPTER 262a. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE**

**Subchap.**

- A. GENERAL**
- B. MANIFEST**
- D. RECORDKEEPING AND REPORTING**
- E. EXPORTS OF HAZARDOUS WASTE**
- H. TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD**
- I. SOURCE REDUCTION STRATEGY**

**Subchapter A. GENERAL**

**Sec.**

- 262a.10. Incorporation by reference, purpose, scope and applicability.
- 262a.12. EPA identification numbers.

**§ 262a.10. Incorporation by reference, purpose, scope and applicability.**

Except as expressly provided in this chapter, 40 CFR Part 262 and its appendices (relating to standards applicable to generators of hazardous waste) are incorporated by reference. In 40 CFR 262.10(g) (relating to purpose, scope and applicability) the term "section 3008 of the act" is replaced with "Article VI of the Solid Waste Management Act (35 P. S. §§ 6018.601—6018.617)."

**§ 262a.12. EPA identification numbers.**

(a) Regarding the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR 262.12 (relating to EPA identification numbers).

(b) In addition to the requirements incorporated by reference, a generator shall submit a subsequent notification to the Department if:

- (1) The generator activity moves to another location.
- (2) The generator facility's designated contact person changes.
- (3) The ownership of the generator facility changes.
- (4) The type of regulated activity that takes place at the generator facility changes.

**Subchapter B. MANIFEST**

**Sec.**

- 262a.20. General requirements.
- 262a.21. Acquisition of manifests.
- 262a.22. Number of copies.
- 262a.23. Use of the manifest.

**§ 262a.20. General requirements.**

40 CFR 262.20(a)—(c) (relating to general requirements) is not incorporated by reference. In addition to the requirements incorporated by reference, a generator shall:

- (1) Complete the manifest form in its entirety and distribute manifest copies in accordance with the instructions included with the manifest.

(2) List no more than four waste streams on one manifest. If the generator is transporting or offering for transportation more than four different hazardous waste streams for offsite treatment, storage or disposal, the generator shall complete additional manifest forms for the remaining waste streams in the shipment, unless the waste stream is a lab pack.

(3) Complete a continuation sheet, EPA Form 8700-22a, when there are more than two transporters, or for lab packs with more than four different waste streams in one shipment.

(4) Ensure that the required information on all copies, including photocopies, of the manifest is legible to the Department, transporter and designated facility.

(5) A generator shall designate only one permitted facility to handle the waste described on the manifest.

**§ 262a.21. Aquisition of manifests.**

The substitution of terms in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 262.21 (relating to acquisition of manifests).

**§ 262a.22. Number of copies.**

(a) 40 CFR 262.22 (relating to number of copies) is not incorporated by reference.

(b) The manifest shall consist of at least the number of copies which will provide the generator, each transporter and the owner or operator of the designated facility with one copy each for their records and which will allow the designated facility to send copies to the generator, generator state and destination state.

**§ 262a.23. Use of the manifest.**

(a) In addition to the requirements incorporated by reference:

(1) The generator shall enter the date of shipment in the designated space on the manifest.

(2) If the out-of-state manifest does not include generator-state copies which would be submitted to the Department, the generator shall submit copies, such as photocopies, of the manifest as signed by the generator and first transporter and as signed upon receipt by the designated facility.

(b) The substitution of terms in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 262.23(e) (relating to notification of shipments of hazardous waste to a facility in an authorized state which has not yet received authorization to regulate a newly designated hazardous waste).

**Subchapter D. RECORDKEEPING AND REPORTING**

- Sec.
- 262a.41. Biennial report.
- 262a.42. Exception reporting

**§ 262a.41. Biennial report.**

Regarding the requirements incorporated by reference, the following replaces the introductory paragraph in 40 CFR 262.41 (relating to biennial report):

A generator who ships hazardous waste offsite to a treatment, storage or disposal facility within the United States shall prepare and submit a single copy of a biennial report to the Department by March 1 of

each even numbered year. The biennial report shall be submitted on EPA Form 8700—13A as modified by the Department, shall cover generator activities during the previous year and shall include the following information:

**§ 262a.42. Exception reporting.**

Regarding the requirements incorporated by reference, the phrase “for the region in which the generator is located” contained in 40 CFR 262.42 (relating to exception reporting) is not incorporated by reference.

**Subchapter E. EXPORTS OF HAZARDOUS WASTE**

- Sec.
- 262a.55. Exception report.
- 262a.56. Annual reports.
- 262a.57. Recordkeeping.

**§ 262a.55. Exception report.**

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262, Subpart E (relating to exports of hazardous waste).

**§ 262a.56. Annual reports.**

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste).

**§ 262a.57. Recordkeeping.**

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262 (relating to standards applicable to generators of hazardous waste).

**Subchapter H. TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD**

- Sec.
- 262a.80. Applicability.

**§ 262a.80. Applicability.**

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to the incorporation by reference of 40 CFR Part 262, Subpart H (relating to transfrontier shipments of hazardous waste for recovery within the OECD).

**Subchapter I. SOURCE REDUCTION STRATEGY**

- Sec.
- 262.100. Source reduction strategy.

**§ 262a.100. Source reduction strategy.**

(a) By January 17, 1994, a person or municipality that generates hazardous waste shall prepare a source reduction strategy in accordance with this section. Except as otherwise provided in this article, the strategy shall be signed by the person or municipality that generated the waste, be maintained on the premises where the waste is generated, be available on the premises for inspection by any representative of the Department and be submitted to the Department upon request. The strategy may

designate certain production processes as confidential. This confidential information may not be made public without the expressed written consent of the generator. Unauthorized disclosure is subject to appropriate penalties as provided by law.

(b) For each type of waste generated, the strategy shall include:

(1) A description of the source reduction activities conducted by the person or municipality in the 5 years prior to the date that the strategy is required to be prepared. The description shall quantify reductions in the weight or toxicity of waste generated on the premises.

(2) A statement of whether the person or municipality established a source reduction program. This program shall identify the methods and procedures that the person or municipality will implement to achieve a reduction in the weight or toxicity of waste generated on the premises, quantify the projected reduction in weight or toxicity of waste to be achieved by each method or procedure and specify when each method or procedure will be implemented.

(3) If the person or municipality has not established a source reduction program as described in paragraph (2), it shall develop a strategy including the following:

(i) A waste stream characterization, including source, hazards, chemical analyses, properties, generation rate, management techniques and management costs.

(ii) A description of potential source reduction options.

(iii) A description of how the options were evaluated.

(iv) An explanation of why each option was not selected.

(c) The strategy required by this section shall be updated when either of the following occurs:

(1) There is a significant change in a type of waste generated on the premises or in the manufacturing process, other than a change described in the strategy as a source reduction method.

(2) Every 5 years, unless the Department establishes, in writing, a different period for the person or municipality that generated the waste.

(d) If hazardous waste generated by a person or municipality will be treated, stored or disposed of at a solid waste management facility which has applied to the Department for approval to treat, store or dispose of the waste, the person or municipality that generated the hazardous waste shall submit the source reduction strategy required by this section to the facility upon the request of the facility.

(e) This section does not apply to persons or municipalities that generate a total of less than 1,000 kilograms of hazardous waste in each month of the year.

(f) A person or municipality that generates hazardous waste may reference existing documents it has prepared to meet other waste minimization requirements to comply with this section, including those proposed to comply with 40 CFR 261.41(a)(5)–(7) (relating to biennial report).

## CHAPTER 263. (Reserved)

§ 263.10. (Reserved).

§ 262.11. (Reserved).

§ 262.13. (Reserved).

§§ 263.20–263.27. (Reserved).

§ 263.30. (Reserved).

§ 263.32. (Reserved).

## CHAPTER 263a. TRANSPORTERS OF HAZARDOUS WASTE

### Subchap.

- A. GENERAL
- B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING
- C. HAZARDOUS WASTE DISCHARGES
- D. BONDING

### Subchapter A. GENERAL

#### Sec.

- 263a.10. Incorporation by reference and scope.
- 263a.11. EPA identification number.
- 263a.12. Transfer facility requirements.
- 263a.13. Licensing.

### § 263a.10. Incorporation by reference and scope.

(a) Except as expressly provided in this chapter, 40 CFR Part 263 (relating to standards applicable to transporters of hazardous waste) is incorporated by reference.

(b) Relative to the requirements incorporated by reference, when used in 40 CFR 263.10 (relating to scope), the phrase "Commonwealth of Pennsylvania" shall be substituted for the phrase "United States."

### § 263a.11. EPA identification number.

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations), does not apply in 40 CFR 263.11 (relating to EPA identification number).

### § 263a.12. Transfer facility requirements.

In addition to the requirements incorporated by reference:

(1) A transporter storing hazardous waste at a transfer facility for periods of not more than 10 days but greater than 3 days shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan. This plan shall be submitted under section 403(b)(10) of the act (35 P. S. § 6018.403(b)(10)) and approved in writing by the Department prior to the initiation of the storage.

(2) A transporter transferring hazardous waste from one vehicle to another at a transfer facility shall prepare an in-transit storage preparedness, prevention and contingency plan in addition to the transporter contingency plan. This plan shall be submitted under section 403(b)(10) of the act and shall be approved in writing by the Department.

### § 263a.13. Licensing.

(a) Except as otherwise provided in subsection (b), § 263a.30, § 261a.5(d), § 266a.70(1) or § 266b.50, a person or municipality may not transport hazardous waste within this Commonwealth without first obtaining a license from the Department.

(b) A person or municipality desiring to obtain a license to transport hazardous waste within this Commonwealth shall:



(1) Comply with 40 CFR 263.11 (relating to EPA identification number).

(2) File a hazardous waste transporter license application with the Department. The application shall be on a form provided by the Department and completed as required by the instructions supplied with the form.

(3) Deposit with the Department a collateral bond conditional upon compliance by the licensee with the act, this article, the terms and conditions of the license and a Department order issued to the licensee. The amount, duration, form, conditions and terms of the bond shall conform to § 263a.32 (relating to bonding).

(4) Supply the Department with relevant additional information it may require.

(c) Upon receiving the application and the information required in subsection (b), the Department evaluates the application for a license and other relevant information and issues or denies the license. If a license is denied, the Department will advise the applicant in writing of the reasons for denial.

(d) A license granted or renewed under this chapter is valid for 2 years unless the Department determines that circumstances justify issuing a license for less than 2 years. The expiration date will be set forth on the license.

(e) A license to transport hazardous wastes is non-transferable and nonassignable and usable only by the licensee and employees of the licensee.

(f) The Department may revoke or suspend a license in whole or in part for one or more of the following reasons:

(1) Violation of an applicable requirement of the act or a regulation promulgated under the act.

(2) Aiding or abetting the violation of the act or a regulation promulgated under the act.

(3) Misrepresentation of a fact either in the application for the license or renewal or in information required or requested by the Department.

(4) Failure to comply with the terms or conditions placed upon the license or renewal.

(5) Failure to comply with an order issued by the Department.

(6) Failure to maintain the required bond amount.

(g) The application for a license shall be accompanied by a check for \$500 payable to the "Commonwealth of Pennsylvania." The application for license renewal shall be accompanied by a check for \$250 payable to the "Commonwealth of Pennsylvania."

(h) In addition to the fees required by subsection (g), the transporter shall submit a fee of \$5 for each license card requested in excess of ten cards.

(i) The licensee shall notify the Department within 30 days of any change in the information contained in the license application.

**Subchapter B. COMPLIANCE WITH THE MANIFEST SYSTEM AND RECORDKEEPING**

- Sec.
- 263a.20. Manifest system.
- 263a.21. Compliance with the manifest system.
- 263a.23. Hazardous waste transportation fee.
- 263a.24. Documentation of hazardous waste transporter fee submission.
- 263a.25. Civil penalties for failure to submit hazardous waste transporter fees.
- 263a.26. Assessment of penalties.

**§ 263a.20. Manifest system.**

(1) Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply in 40 CFR 263.20 (relating to manifest system), as incorporated by reference into this chapter.

(2) In addition to the requirements incorporated by reference, a transporter shall print or type his name.

**§ 263a.21. Compliance with the manifest.**

In addition to the requirements incorporated by reference:

(1) A transporter may not accept or transport hazardous waste if the number or type of containers or quantity of waste to be transported does not correspond with the number, type or quantity stated on the manifest.

(2) A transporter shall assure the manifest is properly completed.

**§ 263a.23. Hazardous waste transportation fee.**

(a) A fee is assessed on hazardous waste transportation to or from a location within this Commonwealth which requires a manifest under § 263a.20, 40 CFR 263.20 and 40 CFR 263.21 (relating to the manifest system; and compliance with the manifest). Each of the following are considered a separate transportation activity, subject to assessment of a fee:

(1) Transport to a location within this Commonwealth from a location out-of-State.

(2) Transport from a location within this Commonwealth to a location out-of-State.

(3) Transport from one location to another within this Commonwealth.

(b) A hazardous waste transportation fee will not be assessed for:

(1) Onsite shipments of hazardous waste.

(2) Hazardous waste shipments through this Commonwealth not originating from, or destined for, a location within this Commonwealth.

(3) Shipments of hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101—6020.1305), the Comprehensive Environmental Response Compensation and Liability Act of 1980 (P.L. 96-510, 94 Stat. 2767), known as the Federal Superfund Act (42 U.S.C.A. §§ 9601—9675), Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901—6987) or the act.

(c) A transporter delivering a shipment of hazardous waste to a designated facility or recycler in this Commonwealth shall pay the transportation fees. If a shipment is destined for a location outside this Commonwealth, the transportation fee will be paid by the transporter that accepts the hazardous waste from a Commonwealth generator or other hazardous waste management location within this Commonwealth.

(d) A transporter shall remit to the Department hazardous waste transportation fees due for each quarter, accompanied by the forms required by § 263a.24 (relating to documentation of hazardous waste transporter fee submission).

(e) Payment of the fees, accompanied by the completed forms required by § 263a.24, shall be postmarked or received by the Department by the 20th day of the month following the quarter ending the last day of March, June,

September and December of each year. If the submission deadline falls on a weekend or State holiday, the report shall be postmarked or received on or before the next business day after the 20th.

(f) Payment shall be by check or money order, payable to "The Hazardous Sites Cleanup Fund," and forwarded with the accompanying forms to the Department at the address specified on the form. Alternative payment methods may be accepted with prior written approval of the Department.

(g) Fees shall be calculated based on standard tons. For purposes of this section:

- (1) A standard ton equals 2,000 pounds.
- (2) A metric ton is converted to a standard ton by dividing the metric ton by a factor of 0.91.
- (3) Liquid wastes shall be converted to tons as follows:
  - (i) Standard measure gallons are converted to tons using a factor of 8 pounds per gallon.
  - (ii) Liters are converted to tons using a factor of 2.1 pounds per liter.
- (4) Cubic yards and cubic meters are converted to standard tons using a factor of 1 ton per each of these units, or part thereof.

(h) Fees are based on the quantities listed on the manifest by the treatment, storage or disposal facility (TSD) or, when not specified by the TSD, as provided by the generator.

**§ 263a.24. Documentation of hazardous waste transporter fee submission.**

(a) A transporter receiving or delivering hazardous waste to or from a site in this Commonwealth shall submit specific information to the Department to document that the amount of fees submitted under § 263a.23 (relating to hazardous waste transportation fee) is accurate. This information shall be provided on forms provided or approved by the Department.

(1) A transporter who has transported hazardous waste during a quarter shall submit completed forms ER-WM-55G and ER-WM-55H, or their successor documents, with the appropriate fees.

(2) A transporter who has not transported hazardous waste during a quarter shall submit only form ER-WM-55G.

(b) The required forms shall be completed by the applicant in conformance with instructions provided.

(c) A transporter shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste transportation activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

**§ 263a.25. Civil penalties for failure to submit hazardous waste transporter fees.**

(a) The Department may assess a civil penalty for:

(1) Failure to submit the hazardous waste transportation fees as required by § 263a.23(d) (relating to hazardous waste transportation fee), failure to submit properly completed documents required by § 263a.24 (relating to documentation of hazardous waste transporter fee submission) or failure to meet the time schedule for submission established by § 263a.23(e).

(2) Intentional submission of falsified information relating to hazardous waste transportation fees required by this chapter and the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).

(3) Failure of a transporter to submit documentation confirming that no fee was due for the preceding quarter.

(b) This section does not preclude the Department from assessing a civil penalty for a violation of the act, the Hazardous Sites Cleanup Act or this article.

**§ 263a.26. Assessment of penalties.**

(a) Consistent with section 605 of the act (35 P. S. § 6018.605) and section 1104 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.1104) and the regulations thereunder, this section sets forth civil penalties for certain violations. This section does not limit the Department's authority to assess a higher penalty for the violations identified in this section, or limit the Department's authority to proceed with appropriate criminal penalties.

(b) If a person or municipality fails to submit the hazardous waste transportation fees as required by § 263a.23(d) (relating to hazardous waste transportation fee), fails to submit properly completed documents required by § 263a.24 (relating to documentation of hazardous waste transporter fee submission) or fails to meet the time schedule for submission established by § 263a.23(e), the Department may assess a minimum civil penalty of \$500 for submissions which are less than 15 days late, and \$500 per day for each day thereafter.

(c) If a person or municipality falsifies information relating to hazardous waste transportation fees required by this chapter and the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305), the Department may assess a civil penalty of \$1,000.

(d) Failure to comply with the fee payment and documentation requirements of this chapter constitutes grounds for suspension or revocation of a hazardous waste transporter license, denial of issuance or renewal of a license, and for forfeiture of the hazardous waste transporter's collateral bond, in addition to civil penalties set forth in this section.

**Subchapter C. HAZARDOUS WASTE DISCHARGES**

Sec.  
263a.30. Immediate action.

**§ 263a.30. Immediate action.**

In addition to the requirements incorporated by reference, in the event of a discharge or spill of hazardous waste during transportation, the transporter shall immediately notify the Department by telephone at (717) 787-4343.

**Subchapter D. BONDING**

Sec.  
263a.32. Bonding.

**§ 263a.32. Bonding.**

(a) A collateral bond means an indemnity agreement in a certain sum payable to the Department executed by the licensee and which is supported by the deposit with the Department of cash, negotiable bonds of the United States of America, the Commonwealth of Pennsylvania, the Turnpike Commission, the General State Authority, the State Public School Building Authority or a Commonwealth municipality, or an irrevocable letter of credit of any bank organized or authorized to transact business in the United States.

(b) A new, revised or renewed license to transport hazardous waste may not be issued by the Department before the applicant for a license has filed a collateral bond payable to the Department on a form provided or approved by the Department, and the bond is approved by the Department.

(c) The bond shall be in an amount sufficient to assure that the licensee faithfully performs the requirements of the act, the regulations promulgated thereunder, the terms and conditions of the license and any Department order issued to the licensee, but a minimum of \$10,000.

(d) Liability under the bond shall continue at a minimum for the duration of the license, any renewal thereof and for a period of 1 year after expiration, termination, revocation or surrender of the license. The 1-year extended period of liability shall include, and shall be automatically extended for, additional time during which administrative or legal proceedings are pending involving a violation by the transporter of the act, regulations promulgated thereunder, the terms or conditions of a license or a Department order.

(e) The Department may require additional bond amounts at any time if the methods of transporting wastes change, the kinds of wastes transported change or the Department determines the additional bond amounts are necessary to guarantee compliance with the act, regulations, the terms and conditions of the license or a Department order.

(f) Collateral bonds are subject to the following conditions:

(1) The Department will obtain possession of and keep in custody all collateral deposited by the licensee until authorized for release as provided in this section.

(2) The Department will value collateral at its current market value.

(3) Collateral shall be in the name of the licensee, not in the name of third parties and shall be pledged and assigned to the Department free and clear of claims.

(g) Letters of credit are subject to the following conditions:

(1) The letter may only be issued by a bank organized or authorized to do business in the United States.

(2) Letters of credit are irrevocable. The Department may accept a letter of credit not revocable for a term of 3 years if:

(i) The letter of credit is automatically renewable for additional terms, unless the bank gives at least 90 days prior written notice to the Department of its intent to terminate the credit at the end of the current term.

(ii) The Department has the right to draw upon the credit before the end of its term and convert it into a cash collateral bond if the licensee fails to replace the letter of credit with other acceptable collateral within 30 days of the bank's notice to terminate the credit.

(3) The letter of credit shall be payable to the Department in part or in full upon demand of the Department in the case of a forfeiture or the failure of the owner or operator to replace the letter of credit as provided in this section.

(4) The Department will not accept letters of credit from a bank for a licensee in excess of 10% of the bank's capital surplus account as shown on a balance sheet certified by a certified public accountant.

(5) Letters of credit are subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 290, including amendments and successor publications.

(6) Letters of credit provide that the bank will give prompt notice to the licensee and the Department of a notice received or action filed alleging the insolvency or bankruptcy of the bank or alleging violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to do business.

(h) Upon the incapacity of a bank by reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the licensee is deemed to be without collateral bond coverage in violation of § 263a.13 (relating to licensing). The Department will issue a notice of violation against a licensee who is without bond coverage. The notice shall specify a reasonable period to replace bond coverage, not to exceed 90 days.

(i) Bonds not declared forfeit in accordance with subsection (j) are released to the licensee 1 year after expiration, termination, revocation or surrender of the license.

(j) The Department will declare forfeit all a licensee's bonds if the Department finds that the licensee violated any requirements of the act, this article, terms and conditions of a license or a Department order issued to the licensee when the Department finds that the licensee failed to remedy a violation promptly.

(k) Remedies provided in law for violation of the act, this article or the conditions of the license, are expressly preserved. Nothing in this section may be construed as an exclusive penalty or remedy for the violations of law. An action taken under this chapter does not waive or impair another remedy or penalty provided in law.

**CHAPTER 264. (Reserved)**

**§ 264.1. (Reserved).**

**§§ 264.11—264.17. (Reserved).**

**§§ 264.31—264.35. (Reserved).**

**§ 264.37. (Reserved).**

**§§ 264.51—264.56. (Reserved).**

**§§ 264.70—264.82. (Reserved).**

**§ 264.90. (Reserved).**

**§ 264.91. (Reserved).**

**§§ 264.96—264.100. (Reserved).**

**§§ 264.110—264.115. (Reserved).**

**§§ 264.117—264.119. (Reserved).**

**§ 264.140. (Reserved).**

**§§ 264.171—264.180. (Reserved).**

**§§ 264.190—264.199. (Reserved).**

**§§ 264.220—264.225. (Reserved).**

**§§ 264.227—264.231. (Reserved).**

**§§ 264.250—264.258. (Reserved).**

**§§ 264.270—264.273. (Reserved).**

**§ 264.276. (Reserved).**

**§§ 264.278—264.282. (Reserved).**

**§§ 264.300—264.305. (Reserved).**

**§ 264.309. (Reserved).**

**§ 264.310. (Reserved).**

§§ 264.312—264.316. (Reserved).

§§ 264.340—264.345. (Reserved).

§ 264.347. (Reserved).

§§ 264.351—264.353. (Reserved).

§§ 264.500—264.505. (Reserved).

§§ 264.520—264.522. (Reserved).

§§ 264.600—264.603. (Reserved).

Appendices A—E. (Reserved).

#### CHAPTER 264a. OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

##### Subchap.

A.	GENERAL
B.	GENERAL FACILITY STANDARDS
D.	CONTINGENCY PLAN AND EMERGENCY PROCEDURES
E.	MANIFEST SYSTEM, RECORDKEEPING AND REPORTING
F.	RELEASES FROM SOLID WASTE MANAGEMENT UNITS
G.	CLOSURE AND POST-CLOSURE
H.	FINANCIAL REQUIREMENTS
I.	USE AND MANAGEMENT OF CONTAINERS
J.	TANK SYSTEMS
K.	SURFACE IMPOUNDMENTS
L.	WASTE PILES
M.	LAND TREATMENT
N.	LANDFILLS
W.	DRIP PADS
DD.	CONTAINMENT BUILDINGS

##### Subchapter A. GENERAL

(Editor's Note: The provisions of Subchapter S adopted May 1, 1999, effective upon delegation of the corrective action program to the Department by the EPA.)

Sec.

264a.1. Incorporation by reference, purpose, scope and reference.

##### § 264a.1. Incorporation by reference, purpose, scope and reference.

(a) Except as expressly provided in this chapter, the requirements of 40 CFR Part 264 and its appendices (relating to standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) are incorporated by reference.

(b) Relative to the requirements incorporated by reference:

(1) 40 CFR 264.1(f) (relating to purpose, scope and applicability), regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs) and Appendix VI (relating to political jurisdictions in which compliance with 40 CFR 264.18(a) (relating to location standards) shall be demonstrated are not incorporated by reference.

(2) Instead of 40 CFR 264.1(b), this chapter applies to an owner or operator of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter, Chapters 261a and 266a and § 270a.60 (relating to identification and listing of hazardous waste; standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities; and permits by rule).

(3) Instead of 40 CFR 264.1(g)(2), this chapter does not apply to the owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2)—(4) (relating to requirements for recyclable materials) except to the extent the requirements are referred to in Chapter 266a, Subchapters C, E, F, G or § 270a.60.

(4) 40 CFR 264.1(g)(6) (relating to elementary neutralization unit and wastewater treatment unit) is not incorporated by reference. The owner or operator of an elementary neutralization unit or wastewater treatment unit may satisfy permitting requirements by complying with § 270a.60(b)(1).

(5) This chapter does not apply to handlers and transporters of universal wastes identified in 40 CFR Part 273 (relating to standards for universal waste management) or additional Pennsylvania-designated universal wastes identified in Chapter 266b (relating to universal wastes).

##### Subchapter B. GENERAL FACILITY STANDARDS

Sec.

264a.11. Identification number and transporter license.

264a.12. Required notices.

264a.13. General and generic waste analysis.

264a.15. General inspection and construction inspection requirements.

264a.18. Location standards.

##### § 264a.11. Identification number and transporter license.

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter who has not received an EPA identification number and a license from the Department, except as otherwise provided. The licensing requirement does not apply to conditionally exempt small quantity generators transporting their own hazardous waste provided that the conditionally exempt small quantity generator is in compliance with § 261.5(d) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators), transporters transporting recyclable materials utilized for precious metal recovery in compliance with § 266a.70(1) (relating to applicability and requirements for recyclable materials utilized for precious metal recovery) or universal waste transporters in compliance with § 266b.50 (relating to applicability of standards for universal waste transporters).

##### § 264a.12. Required notices.

The substitution of terms as specified in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 264.12 (relating to required notices).

##### § 264a.13. General and generic waste analysis.

(a) In addition to the requirements incorporated by reference, before an owner or operator of a facility that treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the owner or operator shall submit to the Department a notification that the facility intends to accept an additional waste stream generated by the specified generator. This notification shall include information that is specified in the facility's permit.

(b) If the notification information required in subsection (a) is not required by the facility's permit, the owner or operator shall submit the information required by § 265a.13 (relating to general and generic waste analysis) until the permit is amended to require the notification information.

##### § 264a.15. General inspection and construction inspection requirements.

In addition to the requirements incorporated by reference, an owner or operator shall submit a schedule for construction of a hazardous waste management facility to the Department for approval. At a minimum, the schedule

shall provide for inspection and approval by the Department of each phase of construction.

**§ 264a.18. Location standards.**

In addition to the requirements incorporated by reference, Chapter 269a (relating to siting) applies to hazardous waste treatment and disposal facilities.

**Subchapter D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES**

Sec.

264a.56. Emergency procedures.

**§ 264a.56. Emergency procedures.**

In addition to the requirements incorporated by reference, the emergency coordinator shall immediately notify the appropriate regional office of the Department or the Department's Central Office by telephone at (717) 787-4343.

**Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING**

Sec.

264a.71. Use of the manifest system.

264a.75. Biennial report.

264a.78. Hazardous waste management fee.

264a.79. Documentation of hazardous waste management fee submission.

264a.80. Civil penalties for failure to submit hazardous waste management fees.

264a.81. Assessment of penalties; minimum penalties.

264a.82. Administration fees.

264a.83. Administration fees during closure.

**§ 264a.71. Use of the manifest system.**

In addition to the requirements incorporated by reference:

(1) An owner or operator, or the agent of the owner or operator, may not accept hazardous waste for treatment, storage or disposal unless it is accompanied by a manifest approved by the Department, unless a manifest is not required by 40 CFR 262.20(e) (relating to the manifest general requirements).

(2) Within 30 days of the delivery, the owner or operator or the agent of the owner or operator shall send the specified copies of the manifest to the Department and generator state, as required.

**§ 264a.75. Biennial report.**

Relative to the requirements incorporated by reference, the owner or operator must submit to the Department its biennial report on EPA Form 8700-13B, as modified by the Department.

**§ 264a.78. Hazardous waste management fee.**

(a) The owner or operator of a hazardous waste management facility shall remit to the Department a hazardous waste management fee based on the total number of tons, or portion thereof, treated, stored or disposed at that facility.

(b) A hazardous waste management fee will not be assessed for:

(1) Storage or treatment of hazardous waste at the site at which it was generated.

(2) Storage or treatment at a captive facility.

(3) Storage of hazardous waste prior to recycling at a commercial recycling facility which meets the requirements of this article.

(4) Hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act, the Federal

Superfund Act, Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901—6987) or the act.

(c) The owner or operator shall remit hazardous waste management fees quarterly along with the forms required by § 264a.79 (relating to documentation of hazardous waste management fee submission) postmarked or delivered to the Department by the 20th day of the month following the quarter ending the last day of March, June, September and December of each year. If the submission date falls on a weekend or State holiday, the report shall be postmarked or received by the Department on or before the next business day after the 20th.

(d) Payment shall be by check or money order, payable to "The Hazardous Sites Cleanup Fund," and shall be forwarded along with the required forms to the Department at the address specified on the form. Alternative payment methods may be accepted with prior written approval of the Department.

(e) For purposes of assessing fees incineration is considered to be treatment. A fee will not be assessed for the incineration of hazardous waste at an onsite or captive incineration facility.

(f) Fees shall be calculated based on standard tons.

(1) For purposes of this section:

(i) A standard ton equals 2,000 pounds.

(ii) A metric ton shall be converted to a standard ton by dividing the metric ton by a factor of 0.91.

(2) Liquid wastes shall be converted to tons as follows:

(i) Standard measure gallons shall be converted to tons using a factor of 8.0 pounds per gallon.

(ii) Liters shall be converted to tons using a factor of 2.1 pounds per liter.

(3) Cubic yards and cubic meters shall be converted to standard tons using a factor of 1 ton per each of these units, or part thereof.

(g) Quantities reported shall be as indicated on the manifest by the treatment, storage or disposal facility designated on the manifest or, if not indicated by that facility, as specified on the manifest by the generator.

(h) Except as provided in subsection (i), if more than one hazardous waste management activity occurs at the same commercial hazardous waste management facility, the owner or operator shall pay a single fee per ton, or fraction thereof, which shall be the highest rate of the management activities involving each individual waste stream at that facility.

(i) When treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator will be assessed the disposal management fee for the waste requiring disposal after treatment or incineration, and the treatment management fee for the remainder of the waste which underwent treatment.

**§ 264a.79. Documentation of hazardous waste management fee submission.**

(a) The owner or operator of a hazardous waste management facility required to submit hazardous waste management fees under § 264a.78 (relating to hazardous waste management fee) shall submit specific information to the Department to document that the amount of fees submitted under § 264a.78 is accurate. This information

shall be submitted on forms provided or approved by the Department and completed in conformance with instructions provided.

(1) The owner or operator of a commercial facility, including onsite facilities which accept hazardous waste generated offsite, shall submit Forms ER-WM-55D, ER-WM-55E and ER-WM-55F, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55D.

(2) The owner or operator of an offsite captive disposal facility shall submit Forms ER-WM-55I, ER-WM-55L, ER-WM-55M and ER-WM-55N, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55I.

(3) The owner or operator of an onsite captive disposal facility which does not accept wastes generated offsite shall submit Forms ER-WM-55I, ER-WM-55J and ER-WM-55K, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted only on Form ER-WM-55I.

(b) The owner or operator of a hazardous waste management facility shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste management activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

**§ 264a.80. Civil penalties for failure to submit hazardous waste management fees.**

(a) The Department may assess a civil penalty for:

(1) Failure to submit hazardous waste management fees as required by § 264a.78(a) (relating to hazardous waste management fee), failure to submit properly completed documents required by § 264a.79 (relating to documentation of hazardous waste management fee submission) or failure to meet the time schedule for submission established by § 264a.78(c).

(2) Intentional submission of falsified information relating to hazardous waste management fees required by this chapter and section 903 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.903).

(3) Failure of a hazardous waste management facility to submit documentation confirming that no fee was due for the preceding quarter.

(b) This section does not preclude the Department from assessing a civil penalty for a violation of the act, or the Hazardous Sites Cleanup Act, this chapter or other chapters of this article.

(c) Failure of the owner or operator of a hazardous waste management facility to comply with the fee payment and documentation requirements of this chapter violates the act, the Hazardous Sites Cleanup Act and the regulations promulgated thereunder, and constitutes grounds for suspension or revocation of its hazardous waste permit, denial of issuance or renewal of a hazardous waste permit, and forfeiture of the facility's bond.

**§ 264a.81. Assessment of penalties; minimum penalties.**

(a) Consistent with section 605 of the act (35 P. S. § 6018.605) and section 1104 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.1104) and regulations thereunder, this section sets forth minimum civil penalties for

certain violations. This section does not limit the Department's authority to assess a higher penalty for the violations identified in this section, or limit the Department's authority to proceed with appropriate criminal penalties.

(b) If a person or municipality fails to submit hazardous waste management fees as required by § 264a.78(c) (relating to hazardous waste management fee), fails to submit properly completed documents required by § 264a.79 (relating to documentation of hazardous waste management fee submission) or fails to meet the time schedule for submission established by § 264a.78(c), the Department will assess a minimum civil penalty of \$500 for submissions which are less than 15 days late, and \$500 per day for each day thereafter.

(c) If a person or municipality falsifies information relating to hazardous waste management fees required by this chapter and the Hazardous Sites Cleanup Act, the Department will assess a minimum civil penalty of \$1,000.

**§ 264a.82. Administration fees.**

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

- (1) Land disposal facilities—\$2,500.
- (2) Surface impoundments—\$2,500.
- (3) Commercial treatment—\$2,000.
- (4) Captive treatment—\$700.
- (5) Storage—\$550.
- (6) Incinerators—\$1,300.

(b) The administration fee shall be in the form of a check made payable to the "Commonwealth of Pennsylvania" and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

**§ 264a.83. Administration fees during closure.**

(a) The owner or operator shall complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes. The Department may approve a longer closure period if the owner or operator demonstrates that:

(1) The closure activities will, of necessity, take longer than 180 days to complete or the following:

(i) The facility has the capacity to receive additional wastes.

(ii) There is reasonable likelihood that a person other than the owner or operator will recommence operation of the site.

(iii) Closure of the facility would be incompatible with continued operation of the site.

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but inactive facility. Under § 264a.112(d) (relating to closure plan; amendment of plan) and paragraph (1)(i), if operation of the site is recommenced, the Department may defer completion of closure activities until the new operation is terminated. The deferral shall be in writing.

(3) The demonstrations referred to in § 264a.112(d) and this section shall be made as follows:

(i) The demonstrations in § 264a.112(d) shall be made at least 30 days prior to the expiration of the 60-day period.

(ii) The demonstrations in this section shall be made at least 30 days prior to the expiration of the 180-day period.

(b) A nonrefundable administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" shall be forwarded to the Department within 30 days after receiving the final volumes of waste, and on or before January 20th of each succeeding year until the requirements of § 264a.115 (relating to certification of closure) are met. The fee shall be:

- (1) Land disposal facilities—\$100.
- (2) Impoundments—\$100.
- (3) All other facilities—\$50.

**Subchapter F. RELEASES FROM SOLID WASTE MANAGEMENT UNITS**

Sec.  
264a.97. General groundwater monitoring requirements.  
264a.101. Corrective action for solid waste management units.

**§ 264a.97. General groundwater monitoring requirements.**

In addition to the requirements incorporated by reference:

(1) The owner or operator shall keep records of analyses and evaluations of groundwater quality, surface elevations and flow rate and direction determinations required under 40 CFR Part 264, Subpart F (relating to releases from solid waste management units).

(2) The owner or operator shall report the following information in writing to the Department:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in 40 CFR 264.98(a) (relating to detection monitoring program) for an upgradient groundwater monitoring well within 15 days after completing a quarterly analysis and no later than 30 days after the end of a quarter.

(ii) Quarterly after the first year: concentrations or values of the parameters in 40 CFR 264.98(a) and required under 40 CFR 264.97(g) (relating to detection monitoring program), for each groundwater monitoring well, along with the required evaluations for these parameters under 40 CFR 264.97(h), within 15 days after completing a quarterly analysis and no later than 30 days after the end of a quarter.

(iii) Annually: concentrations or values of those parameters for each well which are specified by the facility's permit within 15 days of completing the annual analysis.

(iv) Annually: those determinations for the groundwater flow rate and direction specified in 40 CFR 264.99(e) (relating to compliance monitoring).

(3) The owner or operator shall report the groundwater quality required by paragraph (2) and 40 CFR 264.97 at a monitoring point established under 40 CFR 264.95 (relating to point of compliance) in a form necessary for the determination of statistically significant increases under 40 CFR 264.98 (relating to detection monitoring program).

**§ 264a.101. Corrective action for solid waste management units.**

In 40 CFR 264.101(b) (relating to corrective action for solid waste management units), the reference to Subpart

S does not apply until 40 CFR Part 264, Subpart S is effective in this Commonwealth.

**Subchapter G. CLOSURE AND POSTCLOSURE**

Sec.  
264a.115. Certification of closure.  
264a.120. Certification of completion of postclosure care.

**§ 264a.115. Certification of closure.**

The owner or operator shall satisfy § 264a.166 (relating to closure and postclosure certification) instead of the reference to 40 CFR 264.143(i) (relating to financial assurance for closure).

**§ 264a.120. Certification of completion of post-closure care.**

The owner or operator shall satisfy § 264a.166 (relating to closure and postclosure certification) instead of the reference to 40 CFR 264.145(i) (relating to financial assurance for postclosure care).

**Subchapter H. FINANCIAL REQUIREMENTS**

Sec.  
264a.141. Definitions.  
264a.143. Financial assurance for closure.  
264a.145. Financial assurance for postclosure care.  
264a.147. Liability requirements.  
264a.148. Incapacity of owners or operators, guarantors or financial institutions.  
264a.149. Use of state-required mechanisms.  
264a.150. State assumption of responsibility.  
264a.151. Wording of the instruments.  
264a.153. Requirement to file a bond.  
264a.154. Form, terms and conditions of bond.  
264a.155. Special terms and conditions for surety bonds.  
264a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.  
264a.157. Phased deposits of collateral.  
264a.158. Replacement of bond.  
264a.159. Reissuance of permits.  
264a.160. Bond amount determination.  
264a.162. Bond amount adjustments.  
264a.163. Failure to maintain adequate bond.  
264a.164. Separate bonding for a portion of a facility.  
264a.165. Bond release.  
264a.166. Closure and postclosure certification.  
264a.167. Public notice and comment.  
264a.168. Bond forfeiture.  
264a.169. Preservation of remedies.

**§ 264a.141. Definitions.**

In addition to the terms defined in 40 CFR 264.141 (relating to definitions of terms as used in this subpart), which are incorporated by reference, the definitions in section 103 of the act (35 P. S. § 6018.103) and Chapter 260a (relating to hazardous waste management system: general) apply to this subchapter. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Applicant*—An owner or operator of a hazardous waste treatment, storage or disposal facility which is attempting to demonstrate the capability to self-insure all or part of its liabilities to third persons for personal injury and property damage from sudden or nonsudden pollution occurrences, or both.

*Collateral bond*—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator and is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority, or a Commonwealth municipality, Pennsylvania Bank Certificates of Deposit, or irrevocable letters of credit of a bank organized or authorized to transact business in the United States.

*Final closure*—Successful completion of requirements for closure and postclosure care as required by 40 CFR Part 264, Subpart G (relating to closure and postclosure).

*Financial institutions*—Banks and other similar establishments organized or authorized to transact business in this Commonwealth or the United States, and insurance companies or associations licensed and authorized to transact business in this Commonwealth or designated by the Insurance Commissioner as an eligible surplus lines insurer.

*Surety bond*—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator, and is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

*Surety company*—A corporation licensed to do business as a surety in this Commonwealth.

**§ 264a.143. Financial assurance for closure.**

40 CFR 264.143 (relating to financial assurance for closure) is not incorporated by reference except for 40 CFR 264.143(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

**§ 264a.145. Financial assurance for postclosure care.**

40 CFR 264.145 (relating to financial assurance for post-closure care) is not incorporated by reference except for 40 CFR 264.145(f) as referenced in § 264a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

**§ 264a.147. Liability requirements.**

The substitution of terms as specified in § 260a.3(a)(5) (relating to citations related to Federal regulations) does not apply to 40 CFR 264.147(g)(2) and (i)(4) (relating to liability requirements).

**§ 264a.148. Incapacity of owners or operators, guarantors or financial institutions.**

In addition to the requirements incorporated by reference, an owner or operator or guarantor of a corporate guarantee shall also notify the Department by certified mail in accordance with the provisions applicable to notifying the Regional Administrator of the EPA.

**§ 264a.149. Use of state-required mechanisms.**

40 CFR 264.149 (relating to use of state-required mechanisms) is not incorporated by reference.

**§ 264a.150. State assumption of responsibility.**

40 CFR 264.150 (relating to state assumption of responsibility) is not incorporated by reference.

**§ 264a.151. Wording of instruments.**

40 CFR 264.151 (relating to wording of the instruments) is not incorporated by reference.

**§ 264a.153. Requirement to file a bond.**

(a) Hazardous waste storage, treatment and disposal facilities permitted under the act, or being treated as having a permit under the act, shall file a bond in accordance with this subchapter and in the amount determined by § 264a.160 (relating to bond amount determination), payable to the Department.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste unless the applicant files with the Department a bond under this

subchapter, payable to the Department, on a form prepared and provided by or approved by the Department, and the bond is approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility permitted or treated as having a permit, shall cease accepting hazardous waste unless the owner or operator submits a bond under this subchapter. The Department will review and determine whether or not to approve the bond within 1 year of the submittal. If, on review, the Department determines the owner or operator submitted an insufficient bond amount, the Department will require the owner or operator to deposit additional bond amounts under § 264a.162 (relating to bond amount adjustments).

**§ 264a.154. Form, terms and conditions of bond.**

(a) The Department accepts the following types of bond:

(1) A surety bond.

(2) A collateral bond.

(3) A bond pledging a corporate guarantee.

(4) A phased deposit collateral bond as provided in § 264a.157 (relating to phased deposits of collateral).

(b) The Department prescribes and furnishes the forms for bond instruments.

(c) Bonds are payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.4c, 1396.4e and 1396.15c—1396.25), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.

(d) The bond shall cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond shall cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal.

(e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

**§ 264a.155. Special terms and conditions for surety bonds.**

(a) The Department does not accept the bond of a surety company that failed or unduly delayed in making payment on a forfeited surety bond.



(b) The Department accepts only the bond of a surety authorized to do business in this Commonwealth and which is listed in Circular 570 of the United States Department of Treasury.

(c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and the Department. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipts. Within 60 days of receipt of the notice of cancellation, the owner or operator shall provide the Department with a replacement bond under § 264a.158 (relating to replacement of bond). Failure of the owner or operator to provide a replacement bond within the 60-day period constitutes grounds for forfeiture of the existing bond under § 264a.168 (relating to bond forfeiture).

(d) The Department does not accept surety bonds from a surety company for a owner or operator, on all facilities owned or operated by the owner or operator, in excess of the company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341—991), unless the surety has complied with the provisions of The Insurance Company Act of 1921 (40 P. S. §§ 1—297.4) for accepting risk above its single risk limit.

(e) The bond shall provide that full payment will be made on the bond within 30 days of receipt of a notice of forfeiture by the surety, notwithstanding judicial or administrative appeal of the forfeiture, and that the amount is confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the owner or operator are joint and severally liable for payment of the bond amount.

**§ 264a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.**

(a) The Department obtains possession and keeps custody of collateral deposited by the owner or operator until authorized for release or replacement as provided in this subchapter.

(b) The Department values governmental securities for both current market value and face value. For the purpose of establishing the value of the securities for bond deposit, the Department uses the lesser of current market value or face value. Government securities shall be rated at least BBB by Standard and Poor's or Baa by Moody's.

(c) Collateral bonds pledging Pennsylvania bank certificates of deposit are subject to the following conditions:

(1) The Department requires that certificates of deposit are assigned to the Department, in writing, and the assignment recorded upon the books of the issuing institution.

(2) The Department may accept an individual certificate of deposit for the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) and which is otherwise secured under Pennsylvania law.

(3) The Department requires the issuing institution to waive all rights of setoff or liens it has or might have against the certificates.

(4) The Department only accepts automatically-renewable certificates of deposit.

(5) The Department requires that the certificates of deposit be assigned to the Department to assure that the

Department can liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this subchapter.

(6) The Department only accepts certificates of deposit from banks or banking institutions licensed, chartered or otherwise authorized to do business in the United States.

(7) The Department does not accept certificates of deposit from banks that failed or delayed in making payment on defaulted certificates of deposit.

(d) Collateral bonds pledging a bank letter of credit are subject to the following conditions:

(1) The letter of credit is a standby letter of credit issued only by a bank organized or authorized to do business in the United States, examined by a State or Federal agency and Federally insured or equivalently protected.

(2) The letter of credit may not be issued without a credit analysis substantially equivalent to that of a potential borrower in an ordinary loan situation. A letter of credit so issued shall be supported by the owner's or operator's unqualified obligation to reimburse the issuer for moneys paid under the letter of credit.

(3) The letter of credit may not be issued when the amount of the letter of credit, aggregated with other loans and credits extended to the owner or operator, exceeds the issuer legal lending limits for that owner or operator as defined in the United States Banking Code (12 U.S.C.A. §§ 21—220).

(4) The letter of credit is irrevocable and is so designated. The Department may accept a letter of credit for at least a 1 year period if the following conditions are met and stated in the credit:

(i) The letter of credit is automatically renewable for additional time periods of at least 1 year, unless the bank gives at least 120 days prior written notice by certified mail to the Department and the customer of its intent to terminate the credit at the end of the current time period.

(ii) The Department has the right to draw upon the credit before the end of the time period, if the customer fails to replace the letter of credit with other acceptable bond guarantee within 30 days of the bank's notice to terminate the credit.

(5) Letters of credit shall name the Department as the beneficiary and be payable to the Department, upon demand, in part or in full, upon presentation of the Department's drafts at sight. The Department's right to draw upon the letter of credit will not require documentary or other proof by the Department that the customer has violated the conditions of the bond, the permit or another requirement of this subchapter.

(6) Letters of credit are subject to 13 Pa.C.S. (relating to the Uniform Commercial Code) and the latest revision of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce. The Department may accept 13 Pa.C.S. Division 5 (relating to letters of credit) in effect in the state of the issuer.

(7) The issuing bank waives the rights to setoff or liens it has or might have against the letter of credit.

(8) The Department will not accept letters of credit from a bank that failed or delayed in making payment on a letter of credit previously submitted as collateral to the Department.

(e) Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 264.143(f) (relating to financial test and corporate guarantee for closure) and 40 CFR 264.145(f) (relating to financial assurance for post-closure care). Instead of the provisions of 40 CFR 264.143(f)(10)(i) (relating to financial assurance for closure) and 40 CFR 264.145(f)(11)(i), the procedures of § 264a.168 (relating to bond forfeiture), apply to bond forfeiture.

**§ 264a.157. Phased deposits of collateral.**

(a) An owner or operator may post a collateral bond in phased deposits for a hazardous waste storage, treatment or disposal facility that will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The owner or operator submits a collateral bond form to the Department.

(2) The owner or operator deposits \$10,000 or 25%, whichever is greater, of the total amount of bond determined in this chapter in approved collateral with the Department.

(3) The owner or operator submits a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The owner or operator deposits the full amount of bond required for the hazardous waste storage, treatment or disposal facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department makes the demand when one of the following occurs:

(1) The owner or operator fails to make a deposit of bond amount when required by the schedule for the deposits.

(2) The owner or operator violates the requirements of the act, this article, the terms and conditions of the permit or orders of the Department and has failed to correct the violations within the time required for the correction.

(c) Interest earned by collateral on deposit accumulates and becomes part of the bond amount until the owner or operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest so accumulated may not offset or diminish the amount required to be deposited in each of the succeeding years set forth in the schedule of deposit, except that in the last year in which a deposit is due, the amount to be deposited is adjusted by applying the total accumulated interest to the amount to be deposited as established by the schedule of deposit.

**§ 264a.158. Replacement of bond.**

(a) The Department may allow an owner or operator to replace existing surety or collateral bonds with other surety or collateral bonds if the liability accrued against the owner or operator of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond is determined under this chapter, but in no case may it be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the owner or operator submits and the Department approves acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this subchapter.

(c) Within 60 days of approval of acceptable replacement bonds, the Department will take appropriate action to initiate the release of existing surety or collateral bonds being replaced by the owner or operator.

**§ 264a.159. Reissuance of permits.**

Before a permit is reissued to a new owner or operator, the new owner or operator shall post a new bond in an appropriate amount determined by the Department under this subchapter, but in no case less than the amount of bond on deposit with the Department, in the new owner's or operator's name and assume all accrued liability for the hazardous waste storage, treatment or disposal facility.

**§ 264a.160. Bond amount determination.**

(a) The Department determines bond amount requirements for each hazardous waste storage, treatment and disposal facility based upon the total estimated cost to the Commonwealth to complete final closure of the facility. This is done in accordance with the requirements of applicable statutes, this article, the terms and conditions of the permit and orders issued thereunder by the Department and to take measures that are necessary to prevent adverse effects upon the environment during the life of the facility and after closure until released as provided by this subchapter.

(b) This amount is based on the permit applicant's written estimate submitted under 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

**§ 264a.162. Bond amount adjustments.**

The owner or operator shall deposit additional amounts of bond within 60 days of any of the following:

(1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason that requires an additional amount of bond determined under 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

(2) Inflationary cost factors exceed the estimate used for the original bond amount determination under 40 CFR 264.142 and 264.144.

(3) The permit is to be renewed or reissued, or the bond on deposit is to be replaced, requiring an additional amount of bond determined under 40 CFR 264.142 and 264.144.

(4) An additional amount of bond is required as determined by 40 CFR 264.142 and 264.144 to meet the requirements of applicable statutes, this subchapter and the terms and conditions of the permit or orders of the Department.

**§ 264a.163. Failure to maintain adequate bond.**

If an owner or operator fails to post additional bond within 60 days after receipt of a request by the Department for additional bond amounts under § 264a.162 (relating to bond amount adjustments), or fails to make timely deposits of bond in accordance with the schedule submitted under § 264a.157 (relating to phased deposits of collateral), the Department will issue a notice of violation to the owner or operator, and if the owner or operator fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the owner or operator and take additional actions that may be appropriate, including suspending or revoking permits.

**§ 264a.164. Separate bonding for a portion of a facility.**

(a) The Department may require a separate bond to be posted for a part of a hazardous waste storage, treatment or disposal facility if that part of the facility can be separated and identified from the remainder of the facility and the bond liability for that part will continue beyond the time provided for the remainder of the facility, or the Department determines that separate bonding of the facility is necessary to administer and apply applicable statutes, this article, the terms and conditions of the permit or orders of the Department.

(b) If the Department requires a separate bond for part of a facility, the original bond amount for the facility may be adjusted under § 264a.162 (relating to bond amount adjustments).

**§ 264a.165. Bond release.**

(a) The owner or operator may file a written application with the Department requesting release of all or part of the bond amount posted for a hazardous waste storage, treatment or disposal facility. The bond release may be requested during the operation of the facility as part of a request for bond adjustment under § 264a.162 (relating to bond amount adjustments); upon completion of closure for a storage or treatment facility and upon expiration of the postclosure care period of liability, for a disposal facility as specified in 40 CFR Part 264, Subpart G (relating to closure and postclosure care).

(b) The application for bond release shall contain all of the following:

(1) The name of the owner or operator and identify the hazardous waste storage, treatment or disposal facility for which bond release is sought.

(2) The total amount of bond in effect for the facility and the amount for which release is sought.

(3) The reasons why, in specific detail, bond release is requested including, but not limited to, the closure, postclosure care and abatement measures taken, the permit amendments authorized or the change in facts or assumptions made during the bond amount determination which demonstrate and would authorize a release of part or all of the bond deposited for the facility.

(4) A revised cost estimate for closure and postclosure care in accordance with 40 CFR 264.142 and 264.144 (relating to cost estimate for closure; and postclosure care).

(5) Closure or postclosure certification for full bond release requests.

(6) Other information required by the Department.

(c) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under 40 CFR 264.142 and 264.144. If the new bond amount determination would require less bond for the facility than the amount already on deposit, the Department will release the portion of the bond amount which is not required for the facility. If the new bond amount determination would require an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(d) The Department will not release a bond amount deposited for a facility if the release would reduce the total remaining amount of bond to an amount which would be insufficient for the Department to complete closure and postclosure care and to take measures that

may be necessary to prevent adverse effects upon the environment or public health, safety or welfare in accordance with applicable statutes, this chapter, the terms and conditions of the permits and orders of the Department.

(e) The Department will make a decision on a bond release application within 6 months of receipt unless additional time is authorized by the owner or operator.

(f) The Department will not release a bond amount for a facility causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this chapter, the act or the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)).

**§ 264a.166. Closure and postclosure certification.**

(a) The owner or operator shall submit a request for closure or postclosure certification upon completion of closure or postclosure of the facility in accordance with 40 CFR 264.115 or 264.120 (relating to certification of closure; and certification of completion of postclosure care).

(b) Within 60 days after receipt of a written request for closure or postclosure certification, the Department will initiate an inspection of the facility to verify that closure or postclosure was effected in accordance with the approved facility closure or postclosure care plan and this article.

(c) If the Department determines that the facility closed in accordance with this article, and that there is no reasonable expectation of adverse effects upon the environment or the public health, safety and welfare, the Department will certify in writing to the owner or operator that closure or postclosure was effected in accordance with this subchapter. Closure or postclosure certification may not take effect until 1 year after receipt of the Department's determination.

(d) The closure or postclosure certification does not constitute a waiver or release of bond liability or other liability existing in law for adverse environmental conditions or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the owner or operator shall remain liable.

(e) The Department will not issue a closure or postclosure certification for a facility causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or in violation of this article, the act or the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)).

(f) At any time after issuance of a certification of closure or postclosure, if inspection by the Department indicates that additional postclosure care measures are required to abate or prevent any adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the owner or operator setting forth the schedule of measures the owner or operator shall take in order to bring the facility into compliance.

(g) At least 6 months prior to expiration of the 1 year liability period following closure and postclosure care, the Department will conduct an inspection of the facility. If the Department determines that the facility will continue to cause adverse effects upon the environment or the public health, safety and welfare after expiration of the 1-year liability period, the Department will require the owner or operator to deposit a separate bond under § 264a.164 (relating to separate bonding for a portion of

a facility), or forfeit the bond under § 264a.168 (relating to bond forfeiture) on deposit with the Department.

**§ 264a.167. Public notice and comment.**

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure or postclosure certification shall be, for the purpose of providing public notice and comment, considered a permit modification and shall be subject to the public notice and comment requirements for Class 3 permit modifications.

**§ 264a.168. Bond forfeiture.**

(a) The Department will forfeit the bond for a hazardous waste storage, treatment or disposal facility if the Department determines that any of the following occur:

(1) The owner or operator fails and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(2) The owner or operator abandons the facility without providing closure or postclosure care, or otherwise fails to properly close the facility in accordance with the requirements of this article, the act, section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(3) The owner or operator fails, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during and after closure and postclosure care.

(4) The owner or operator or financial institution becomes insolvent, fails in business, is adjudicated bankrupt, a delinquency proceeding is initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63), files a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or has a receiver appointed by the court, or has action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the owner or operator attaches or executes a judgment against the owner's or operator's equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the owner or operator or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) If the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the owner or operator, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the owner or operator and surety, if any, of their right to appeal to the EHB under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

**§ 264a.169. Preservation of remedies.**

Remedies provided or authorized by law for violation of statutes, including but not limited to, the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), this article and the terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this chapter may be construed as an exclusive penalty or remedy for the violations. An action taken under this subchapter may not waive or impair another remedy or penalty provided in law.

**Subchapter I. USE AND MANAGEMENT OF CONTAINERS**

Sec.

264a.173. Management of containers.

264a.180. Weighing or measuring facilities.

**§ 264a.173. Management of containers.**

In addition to the requirements incorporated by reference:

(1) For indoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

(2) For outdoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application. In addition, a 40-foot setback from a building shall be maintained for all outdoor container storage of reactive or ignitable hazardous waste.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application.

**§ 264a.180. Weighing or measuring facilities.**

Weighing or measuring facilities, if necessary or when required by the Department, shall weigh hazardous wastes brought to the treatment, storage or disposal facility, except for captive facilities that handle liquids or flowable wastes—less than 20% solids—amenable to accurate flow measurements, or captive facilities that possess other waste inventory controls—volume controls. Weighing facilities shall be capable of weighing the maximum anticipated load plus the weight of the transport vehicle. The precision of weighing devices shall be certified by the Department of Agriculture. For offsite facilities or onsite facilities receiving waste from offsite sources, the hours of operation for the facility shall be prominently displayed on a sign at the entrance. The lettering shall be a minimum of 4 inches in height and of a color contrasting with its background.

**Subchapter J. TANK SYSTEMS**

Sec.

- 264a.191. Assessment of existing tank system's integrity.
- 264a.193. Containment and detection of releases.
- 264a.194. General operating requirements.
- 264a.195. Inspections.

**§ 264a.191. Assessment of existing tank system's integrity.**

In addition to the requirements incorporated by reference, by January 17, 1994, an owner or operator of tanks or tank systems shall obtain and keep on file at the facility a written assessment of the tank or tank system's integrity in accordance with 40 CFR 264.191 (relating to assessment of existing tank system's integrity).

**§ 264a.193. Containment and detection of releases.**

In addition to the requirements incorporated by reference, an owner or operator of existing tank systems shall comply with 40 CFR 264.193 (relating to containment and detection of release) by January 16, 1995, except that an owner operator of existing tank systems for which the age cannot be documented shall comply with 40 CFR 264.193 by January 16, 1996.

**§ 264a.194. General operating requirements.**

In addition to the requirements incorporated by reference, tanks shall be labeled to accurately identify their contents.

**§ 264a.195. Inspections.**

In addition to the requirements incorporated by reference, the tank or tank system shall be inspected every 72 hours when not operating, if waste remains in the tank or tank system components.

**Subchapter K. SURFACE IMPOUNDMENTS**

Sec.

- 264a.221. Design and operating requirements.

**§ 264a.221. Design and operating requirements.**

In addition to the requirements incorporated by reference:

(1) For surface impoundments subject to 40 CFR 264.221(a) or (c) (relating to design and operating requirements), a minimum distance of 4 feet shall be maintained between the bottom of the liner and seasonal high water table without the use of artificial or manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table. The distance between the top of the subbase and the regional water table shall be a minimum of 8 feet.

(2) The Department may, upon written application from a person who is subject to this provision, grant a variance from this provision. An application for a variance shall identify the specific provision from which a variance is sought and demonstrate that suspension of the identified provision will result in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provision. A variance shall be at least as stringent as the requirements of section 3010 of RCRA (40 U.S.C.A. § 6930), and this article.

**Subchapter L. WASTE PILES**

Sec.

- 264a.251. Design and operating requirements.

**§ 264a.251. Design and operating requirements.**

In addition to the requirements incorporated by reference:

(1) For a waste pile subject to the design and operating requirements of 40 CFR 264.251(a) or (c) (relating to design and operating requirements), a minimum distance of 20 inches between the bottom of the liner and seasonal high groundwater table shall be maintained without the use of artificial and manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table.

(2) 40 CFR 264.251(c)(5) (relating to leak detection systems not located completely above the seasonal high water table) is not incorporated by reference.

**Subchapter M. LAND TREATMENT**

Sec.

- 264a.273. Design and operating requirements.
- 264a.276. Food chain crops.

**§ 264a.273. Design and operating requirements.**

In addition to the requirements incorporated by reference, land treatment of hazardous waste shall be subject to the following restrictions:

(1) The hazardous waste shall be mixed into or turned under the soil surface within 24 hours of application, unless it is spray irrigated and the spray irrigated hazardous waste:

- (i) Is used for top dressing.
- (ii) Has plant nutrient value.
- (iii) Is applied with proper spray irrigation equipment and through proper spray irrigation methods.
- (iv) Is not transported offsite by aerosol transport while being spray irrigated.

(2) Hazardous waste shall be spread or sprayed in thin layers to prevent ponding and standing accumulations of liquids or sludges.

(3) Hazardous waste may not be applied when the ground is saturated, covered with snow, frozen or during periods of rain.

(4) Hazardous waste may not be applied in quantities which will result in vector or odor problems.

(5) Hazardous waste shall only be applied to those soils which fall within the United States Department of Agriculture (USDA) textural classes of sandy loam, loam, sandy clay loam, silty clay loam and silt loam.

(6) The soils shall have sola with a minimum depth of 20 inches and at least 40 inches of soil depth.

**§ 264a.276. Food chain crops.**

In addition to the requirements incorporated by reference tobacco and crops intended for direct human consumption may not be grown on hazardous waste land treatment facilities.

**Subchapter N. LANDFILLS**

Sec.

- 264a.301. Design and operating requirements.

**§ 264a.301. Design and operating requirements.**

In addition to the requirements incorporated by reference:

(1) For a landfill subject to the design and operating provisions of 40 CFR 264.301(a) or (c) (relating to design and operating requirements), a minimum distance of 4 feet between the bottom of the liner and seasonal high groundwater table shall be maintained without the use of artificial and manmade groundwater drainage or dewatering systems. Soil mottling may indicate the presence of a seasonal high groundwater table. The distance between

the bottom of the liner and the regional groundwater table shall be a minimum of 8 feet.

(2) The Department may, upon written application from a person who is subject to this section, grant a variance from this section. An application for a variance shall identify the specific provision from which a variance is sought and demonstrate that suspension of the identified provision will result in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provision. A variance shall be at least as stringent as the requirements of section 3010 of RCRA (40 U.S.C.A. § 6930), and this article.

(3) 40 CFR 264.301(l) (relating to landfills located in the State of Alabama) is not incorporated by reference.

#### Subchapter W. DRIP PADS

Sec.

264a.570. Applicability.

##### § 264a.570. Applicability.

Instead of 40 CFR 264.570(a), this subchapter applies to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation or surface water run-off to an associated collection system. Existing drip pads are those constructed before January 11, 1997.

#### Subchapter DD. CONTAINMENT BUILDINGS

Sec.

264a.1100. Applicability.

264a.1101. Design and operating standards.

##### § 264a.1100. Applicability.

Instead of the effective date of February 18, 1993, found in 40 CFR 264.1100 (relating to applicability), the effective date is January 11, 1997.

##### § 264a.1101. Design and operating standards.

In addition to the requirements incorporated by reference:

(1) An owner or operator of existing units described in 40 CFR 264.1101(b)(4) (relating to design and operating standards) seeking a delay in the secondary containment requirement for up to 2 years shall provide written notice to the Department by July 11, 1997. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment.

(2) For units placed into operation prior to January 11, 1997, certification by a qualified registered professional engineer that the containment building design meets the requirements of 40 CFR 264.1101(a)—(c) shall be placed in the facility's operating record (onsite files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit.

(3) For units placed into operation after January 11, 1997, certification by a qualified registered professional engineer that the containment building design meets the requirements of 40 CFR 264.1101(a)—(c) will be required prior to operation of the unit.

#### CHAPTER 265. (Reserved)

§ 265.1. (Reserved).

§§ 265.11—265.17. (Reserved).

§§ 265.31—265.35. (Reserved).

§ 265.37. (Reserved).

§§ 265.51—265.56. (Reserved).

§§ 265.70—265.82. (Reserved).

§§ 265.90—265.94. (Reserved).

§§ 265.110—265.115. (Reserved).

§§ 265.117—265.119. (Reserved).

§ 265.140. (Reserved).

§ 265.142. (Reserved).

§ 265.144. (Reserved).

§§ 265.171—265.178. (Reserved).

§§ 265.190—265.201. (Reserved).

§ 265.220. (Reserved).

§ 265.222. (Reserved).

§ 265.223. (Reserved).

§ 265.225. (Reserved).

§ 265.226. (Reserved).

§§ 265.228—265.230. (Reserved).

§ 265.270. (Reserved).

§ 265.272. (Reserved).

§ 265.273. (Reserved).

§ 265.276. (Reserved).

§§ 265.278—265.282. (Reserved).

§ 265.300. (Reserved).

§ 265.302. (Reserved).

§ 265.309. (Reserved).

§ 265.310. (Reserved).

§§ 265.312—265.315. (Reserved).

§§ 265.340—265.342. (Reserved).

§ 265.345. (Reserved).

§ 265.347. (Reserved).

§ 265.351. (Reserved).

§ 265.370. (Reserved).

§ 265.373. (Reserved).

§ 265.375. (Reserved).

§ 265.377. (Reserved).

§ 265.381. (Reserved).

§ 265.382. (Reserved).

§§ 265.400—265.406. (Reserved).

§§ 265.430—265.433. (Reserved).

§ 265.435. (Reserved).

§§ 265.440—265.448. (Reserved).

§§ 265.450—265.452. (Reserved).

§§ 265.460—265.462. (Reserved).

§ 265.470. (Reserved).

§§ 265.500—265.505. (Reserved).

§§ 265.520—265.522. (Reserved).

**CHAPTER 265a. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES**

**Subchap.**

- A. GENERAL
- B. GENERAL FACILITY STANDARDS
- D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES
- E. MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING
- G. CLOSURE AND POSTCLOSURE
- H. FINANCIAL REQUIREMENTS
- I. USE AND MANAGEMENT OF CONTAINERS
- J. TANK SYSTEMS
- P. THERMAL TREATMENT

**Subchapter A. GENERAL**

Sec.

265a.1. Incorporation by reference, purpose, scope and applicability.

**§ 265a.1. Incorporation by reference, purpose, scope and applicability.**

(a) Except as expressly provided in this chapter, 40 CFR Part 265 and its appendices (relating to interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities) are incorporated by reference.

(b) Relative to the requirements incorporated by reference in this section:

(1) 40 CFR 265.1(c)(4) (relating to purpose, scope and applicability) regarding state program authorization under 40 CFR Part 271 (relating to requirements for authorization of state hazardous waste programs), are not incorporated to this section.

(2) This chapter applies to owners and operators of facilities which treat, store or dispose of hazardous waste in this Commonwealth, except as specifically provided in this chapter, Chapter 261a, 266a or § 270a.60 (relating to identification and listing of hazardous waste; management of specific hazardous wastes and specific types of hazardous waste management facilities; and permits by rule) instead of 40 CFR 265.1(b).

(3) Instead of 40 CFR 265.1(c)(6), this chapter does not apply to the owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2)—(4) (relating to requirements for recyclable materials) except to the extent they are referred to in Chapter 266a, Subchapters C, E, F, G or § 270a.60.

(4) This chapter does not apply to handlers and transporters of universal wastes identified in 40 CFR Part 273 (relating to universal waste management) or additional Pennsylvania-designated universal wastes identified in Chapter 266b (relating to management of specific hazardous wastes and specific types of hazardous waste management facilities).

**Subchapter B. GENERAL FACILITY STANDARDS**

Sec.

265a.11. Identification number and transporter license.

265a.12. Required notices.

265a.13. General and generic waste analysis.

265a.15. General inspection and construction inspection requirements.

265a.18. Location standards.

**§ 265a.11. Identification number and transporter license.**

In addition to the requirements incorporated by reference, a person or municipality who owns or operates a

hazardous waste management facility may not accept hazardous waste for treatment, storage or disposal from a transporter without an EPA identification number and a license from the Department, except as otherwise provided. The licensing requirement does not apply to conditionally exempt small quantity generators transporting their own hazardous waste if the conditionally exempt small quantity generator is in compliance with § 261a.5(d) (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) transporters transporting recyclable materials utilized for precious metal recovery in compliance with § 266a.70(1) (relating to applicability and requirements for recyclable materials utilized for precious metal recovery) or universal waste transporters in compliance with § 266b.50 (relating to applicability of standards for universal waste transporters).

**§ 265a.12. Required notices.**

The substitution of terms as specified in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 265.12 (relating to required notices).

**§ 265a.13. General and generic waste analysis.**

In addition to the requirements incorporated by reference:

(1) Except as provided in paragraphs (4) and (5), before an owner or operator treats, stores or disposes of a specific hazardous waste from a specific generator for the first time, the owner or operator shall submit to the Department for approval, on a form provided by the Department, or on a form approved by the Department, a report which the owner or operator shall retain for 3 years. The report shall include the following information:

(i) A detailed chemical and physical analysis of the waste.

(ii) A description of the waste and the process generating the waste.

(iii) The name and address of the hazardous waste management facility.

(iv) A description of the hazardous waste management facility's treatment, storage and disposal methods.

(v) Results of liner compatibility testing.

(vi) An assessment of the impact of the waste on the hazardous waste management facility.

(vii) Other information which the Department may prescribe for the Department to determine whether the waste will be treated, stored or disposed of in accordance with this chapter. The chemical and physical analysis of the waste shall be repeated under one or more of the following circumstances:

(A) When necessary to ensure that it is accurate and up-to-date.

(B) When the owner or operator is notified, or has reason to believe, that the process or operation that generates the hazardous waste has changed.

(C) For offsite facilities or onsite facilities receiving waste from offsite sources, when the results of the inspection or analysis, or both, of each hazardous waste indicates that the waste received at the facility does not match the description of the waste on the accompanying manifest or shipping paper.

(2) The owner or operator shall develop and follow a written waste analysis plan in compliance with 40 CFR

265.13 (relating to general waste analysis) which shall be submitted to the Department for approval at a time in the application process as the Department may prescribe. The plan shall be retained at the facility.

(3) The owner or operator of a facility utilizing a liner shall conduct an evaluation of the liner compatibility with the hazardous waste before accepting the waste for emplacement in a waste pile, surface impoundment or landfill unless the approval to accept the waste is granted in the facility's permit. The evaluation procedure shall meet the approval of the Department prior to its commencement. The evaluation of the liner shall consist of testing the liner in the presence of the waste for a minimum of 30 days or as otherwise approved by the Department. In lieu of actual testing, existing published or documented data on the hazardous waste or waste generated from similar processes proving the liner compatibility may be substituted if approved by the Department. The results of the evaluation of the liner compatibility shall be furnished to the Department for approval of the waste before acceptance by the facility.

(4) The Department may waive prior approval of the report specified in paragraph (1) for wastes that are in containers that are only to be stored at the facility. The Department may waive prior approval of the report only if:

(i) The Department determines that the waiver does not pose a potential threat to human health or the environment.

(ii) The management of the wastes is allowed in the permit for the facility and properly addressed in the approved waste analysis plan for the facility.

(iii) The report is submitted to the Department within 1 week of the arrival of the wastes at the facility and a copy of the report is maintained in the operating record onsite for 20 years.

(5) Prior Department approval of the report specified in paragraph (1) is not required for offsite reclamation facilities that, under a contractual agreement, supply raw material to a generator and accept the expended material from the generator for storage prior to reclamation.

(6) In lieu of the waste and generator specific report required by paragraphs (1)–(3), the Department may accept from the operator of a treatment, storage or disposal facility a Generic Module I application for similar wastes containing similar hazardous constituents from multiple generators.

(7) An application for a Generic Module I shall include:

(i) The information required by paragraph (1). Generator specific information shall be included for each generator identified in the application.

(ii) Criteria for determining whether the wastes have similar physical and chemical characteristics and contain similar hazardous constituents.

(8) Additional generators may be added to an approved Generic Module I if the operator of the treatment, storage or disposal facility demonstrates that the waste from the new generator is consistent with the waste already approved in the Generic Module I. At least 15 days prior to accepting a waste from a new generator, the operator of the treatment, storage or disposal facility shall submit to the Department in writing, the generator specific information required by paragraph (1). The Department

will not add an additional generator to the Generic Module I if the Department finds that the operator of the treatment, storage or disposal facility has not demonstrated that the waste from the new generator is consistent with that approved under the Generic Module I.

(9) A permit modification and Generic Module I requested under this section shall be accompanied by a fee, as specified in § 270a.3 (relating to payment of fees).

#### **§ 265a.15. General inspection and construction inspection requirements.**

In addition to the requirements incorporated by reference, an owner or operator shall submit a schedule for construction of a hazardous waste management facility to the Department for approval. At a minimum, the schedule shall provide for inspection and approval by the Department of each phase of construction.

#### **§ 265a.18. Location standards.**

In addition to the requirements incorporated by reference, Chapter 269a (relating to siting) applies to hazardous waste treatment and disposal facilities.

### **Subchapter D. CONTINGENCY PLAN AND EMERGENCY PROCEDURES**

Sec.  
265a.56. Emergency procedures.

#### **§ 265a.56. Emergency procedures.**

In addition to the requirements incorporated by reference, the emergency coordinator shall immediately notify the appropriate regional office of the Department, or the Department's Central Office by telephone at (717) 787-4343.

### **Subchapter E. MANIFEST SYSTEM, RECORDKEEPING AND REPORTING**

Sec.  
265a.71. Use of the manifest system.  
265a.75. Biennial report.  
265a.78. Hazardous waste management fee.  
265a.79. Documentation of hazardous waste management fee submission.  
265a.80. Civil penalties for failure to submit hazardous waste management fees.  
265a.81. Assessment of penalties; minimum penalties.  
265a.82. Administration fees.  
265a.83. Administration fees during closure.

#### **§ 265a.71. Use of the manifest system.**

In addition to the requirements incorporated by reference:

(1) An owner or operator, or the agent of the owner or operator, may not accept hazardous waste for treatment, storage or disposal unless it is accompanied by a manifest approved by the Department, unless a manifest is not required by 40 CFR 262.20(e) (relating to general requirements).

(2) Within 30 days of the delivery, the owner or operator or the agent of the owner or operator shall send the specified copies of the manifest to the Department and generator state, as required.

#### **§ 265a.75. Biennial report.**

Relative to the requirements incorporated by reference, the owner or operator shall submit to the Department its biennial report on EPA Form 8700-13B, as modified by the Department.

#### **§ 265a.78. Hazardous waste management fee.**

(a) The owner or operator of a hazardous waste management facility shall remit to the Department a hazard-



ous waste management fee based on the total number of tons, or portion thereof, treated, stored or disposed at that facility.

(b) A hazardous waste management fee will not be assessed for:

(1) Storage or treatment of hazardous waste at the site at which it was generated.

(2) Storage or treatment at a captive facility.

(3) Storage of hazardous waste prior to recycling at a commercial recycling facility which meets the requirements of this article.

(4) Hazardous waste derived from the cleanup of a site under the Hazardous Sites Cleanup Act, the Federal Superfund Act, Title II of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901—6987) or the act.

(c) The owner or operator shall remit hazardous waste management fees quarterly along with the forms required by § 265a.79 (relating to documentation of hazardous waste management fee submission) postmarked or delivered to the Department by the 20th day of the month following the quarter ending the last day of March, June, September and December of each year. If the submission date falls on a weekend or State holiday, the report shall be postmarked or received by the Department on or before the next business day after the 20th.

(d) Payment shall be by check or money order, payable to "The Hazardous Sites Cleanup Fund," and shall be forwarded along with the required forms to the Department at the address specified on the form. Alternative payment methods may be accepted with prior written approval of the Department.

(e) For purposes of assessing fees, incineration is considered to be treatment. A fee will not be assessed for the incineration of hazardous waste at an onsite or captive incineration facility.

(f) Fees shall be calculated based on standard tons.

(1) For purposes of this section:

(i) A standard ton equals 2,000 pounds.

(ii) A metric ton shall be converted to a standard ton by dividing the metric ton by a factor of 0.91.

(2) Liquid wastes shall be converted to tons as follows:

(i) Standard measure gallons shall be converted to tons using a factor of 8.0 pounds per gallon.

(ii) Liters shall be converted to tons using a factor of 2.1 pounds per liter.

(3) Cubic yards and cubic meters shall be converted to standard tons using a factor of 1 ton per each of these units, or part thereof.

(g) Quantities reported shall be as indicated on the manifest by the treatment, storage or disposal facility designated on the manifest or, if not indicated by that facility, as specified on the manifest by the generator.

(h) Except as provided in subsection (i), if more than one hazardous waste management activity occurs at the same commercial hazardous waste management facility, the owner or operator shall pay a single fee per ton, or fraction thereof, which shall be the highest rate of the management activities involving each individual waste stream at that facility.

(i) When treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator shall be assessed the disposal management fee for the waste requiring disposal after treatment or incineration, and the treatment management fee for the remainder of the waste which underwent treatment.

**§ 265a.79. Documentation of hazardous waste management fee submission.**

(a) The owner or operator of a hazardous waste management facility required to submit hazardous waste management fees under § 264a.78 (relating to hazardous waste management fee) shall submit specific information to the Department to document that the amount of fees submitted under § 264a.78 is accurate. This information shall be submitted on forms provided or approved by the Department and completed in conformance with instructions provided.

(1) The owner or operator of a commercial facility, including onsite facilities which accept hazardous waste generated offsite, shall submit forms ER-WM-55D, ER-WM-55E and ER-WM-55F, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted on form ER-WM-55D only.

(2) The owner or operator of an offsite captive disposal facility shall submit forms ER-WM-55I, ER-WM-55L, ER-WM-55M and ER-WM-55N, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted on form ER-WM-55I only.

(3) The owner or operator of an onsite captive disposal facility which does not accept wastes generated offsite shall submit forms ER-WM-55I, ER-WM-55J and ER-WM-55K, or successor documents. If no hazardous waste management activities subject to the fees have occurred during a quarter, documentation to that effect shall be submitted on form ER-WM-55I only.

(b) The owner or operator of a hazardous waste management facility shall, upon request from the Department, provide additional information or documentation regarding its hazardous waste management activities necessary for the Department to assess the accuracy of the information contained on the required forms and the amount of fees due.

**§ 265a.80. Civil penalties for failure to submit hazardous waste management fees.**

(a) The Department may assess a civil penalty for:

(1) Failure to submit hazardous waste management fees as required by § 265a.78(a) (relating to hazardous waste management fee), failure to submit properly completed documents required by § 265a.79 (relating to documentation of hazardous waste management fee submission) or failure to meet the time schedule for submission established by § 265a.78(c).

(2) Intentional submission of falsified information relating to hazardous waste management fees required by this chapter and section 903 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.903).

(3) Failure of a hazardous waste management facility to submit documentation confirming that no fee was due for the preceding quarter.

(b) This section does not preclude the Department from assessing a civil penalty for a violation of the act, or the

Hazardous Sites Cleanup Act, this chapter or other chapters of this article.

(c) Failure of the owner or operator of a hazardous waste management facility to comply with the fee payment and documentation requirements of this chapter violates the act, the Hazardous Sites Cleanup Act and the regulations promulgated thereunder, and constitutes grounds for suspension or revocation of its hazardous waste permit, denial of issuance or renewal of a hazardous waste permit, and forfeiture of the facility's bond.

**§ 265a.81. Assessment of penalties; minimum penalties.**

(a) Consistent with section 605 of the act (35 P. S. § 6018.605) and section 1104 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.1104) and regulations thereunder, this section sets forth minimum civil penalties for certain violations. This section does not limit the Department's authority to assess a higher penalty for the violations identified in this section, or limit the Department's authority to proceed with appropriate criminal penalties.

(b) If a person or municipality fails to submit hazardous waste management fees as required by § 265a.78(c) (relating to hazardous waste management fee), fails to submit properly completed documents required by § 265a.79 (relating to documentation of hazardous waste management fee submission) or fails to meet the time schedule for submission established by § 265a.78(c), the Department will assess a minimum civil penalty of \$500 for submissions which are less than 15 days late, and \$500 per day for each day thereafter.

(c) If a person or municipality falsifies information relating to hazardous waste management fees required by this chapter and the Hazardous Sites Cleanup Act, the Department will assess a minimum civil penalty of \$1,000.

**§ 265a.82. Administration fees.**

(a) The owner or operator of a hazardous waste management facility shall annually pay an administration fee to the Department according to the following schedule:

- (1) Land disposal facilities—\$2,500.
- (2) Surface impoundments—\$2,500.
- (3) Commercial treatment—\$2,000.
- (4) Captive treatment—\$700.
- (5) Storage—\$550.
- (6) Incinerators—\$1,300.

(b) The administration fee shall be in the form of a check made payable to the "Commonwealth of Pennsylvania" and be paid on or before the first of March to cover the preceding year.

(c) If more than one permitted activity is located at a site, or more than one activity occurs, the fee shall be cumulative.

**§ 265a.83. Administration fees during closure.**

(a) Within 90 days after receiving the final volume of hazardous waste, or 90 days after approval of the closure plan, whichever is later, the owner or operator shall treat, remove from the site or dispose of onsite all hazardous waste in accordance with the approved closure plan. The Department may approve in writing a longer period if the owner or operator demonstrates one of the following:

(1) The activities required to comply with this subsection will, of necessity, take longer than 90 days to complete, and the owner or operator will continue to take all measures necessary to ensure safety to human health and the environment.

(2) The facility has additional capacity under its permit, someone other than the present owner or operator will obtain a permit to recommence operation of the site, closure would be incompatible with continued operation of the site, and the owner or operator will continue to take all measures necessary to ensure safety to human health and the environment.

(b) The owner or operator shall complete closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of wastes or 180 days after approval of the closure plan, whichever is later. The Department may in writing approve a longer closure period if the owner or operator demonstrates the following:

(1) The closure activities will, of necessity, take him longer than 180 days to complete, and the owner or operator will continue to take measures necessary to ensure safety to human health and the environment.

(2) The facility has additional capacity under its permit, someone other than the owner or operator will obtain a permit to recommence operation of the site, closure would be incompatible with continued operation of the site and the owner or operator will continue to take all measures necessary to ensure safety to human health and the environment.

(c) The demonstrations referred to in subsections (a) and (b) shall be made as follows:

(1) The demonstrations in subsection (a) shall be made at least 30 days prior to the expiration of the 90-day period in subsection (b).

(2) The demonstrations in subsection (b) shall be made at least 30 days prior to the expiration of the 180-day period in subsection (b).

(d) A nonrefundable administration fee in the form of a check payable to the "Commonwealth of Pennsylvania" shall be forwarded to the Department within 30 days after receiving the final volumes of waste, and on or before January 20th of each succeeding year until the requirements of § 264a.115 (relating to certification of closure) are met. The fee shall be:

- (1) Land disposal facilities—\$100.
- (2) Impoundments—\$100.
- (3) Other facilities—\$50.

**Subchapter G. CLOSURE AND POSTCLOSURE**

Sec.

265a.115. Certification of closure.

265a.120. Certification of completion of postclosure care.

**§ 265a.115. Certification of closure.**

The owner or operator shall satisfy § 265a.166 (relating to closure and postclosure certification) instead of the reference to 40 CFR 265.143(h) (relating to final assurance for closure).

**§ 265a.120. Certification of completion of postclosure care.**

The owner or operator shall satisfy § 265a.166 (relating to closure and postclosure certification) instead of the reference to § 265.145a(h) (relating to financial assurance for postclosure care).

**Subchapter H. FINANCIAL REQUIREMENTS**

- Sec.
- 265a.141. Definitions.
- 265a.143. Financial assurance for closure.
- 265a.145. Financial assurance for postclosure care.
- 265a.147. Liability requirements.
- 265a.148. Incapacity of owners or operators, guarantors or financial institutions.
- 265a.149. Use of state-required mechanisms.
- 265a.150. State assumption of responsibility.
- 265a.153. Requirements to file a bond.
- 265a.154. Form, terms and conditions of bond.
- 265a.155. Special terms and conditions for surety bonds.
- 265a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.
- 265a.157. Phased deposits of collateral.
- 265a.158. Replacement of bond.
- 265a.159. Reissuance of permits.
- 265a.160. Bond amount determination.
- 265a.162. Bond amount adjustments.
- 265a.163. Failure to maintain adequate bond.
- 265a.164. Separate bonding for a portion of a facility.
- 265a.165. Bond release.
- 265a.166. Closure and postclosure certification.
- 265a.167. Public notice and comment.
- 265a.168. Bond forfeiture.
- 265a.169. Preservation of remedies.

**§ 265a.141. Definitions.**

In addition to the terms defined in 40 CFR 265.141 (relating to definitions of terms as used in this subpart) which are incorporated by reference, the definitions in section 103 of the act (35 P. S. § 6018.103) and Chapter 260a (relating to definitions and requests for determination) apply to this subchapter. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Applicant*—An owner or operator of a hazardous waste treatment, storage or disposal facility which is attempting to demonstrate the capability to self-insure all or part of its liabilities to third persons for personal injury and property damage from sudden or nonsudden pollution occurrences, or both.

*Collateral bond*—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator and which is supported by the deposit with the Department of cash, negotiable bonds of the United States, the Commonwealth, the Turnpike Commission, the General State Authority, the State Public School Building Authority, or a Commonwealth municipality, Pennsylvania Bank Certificates of Deposit, or irrevocable letters of credit of a bank organized or authorized to transact business in the United States.

*Final closure*—Successful completion of requirements for closure and postclosure care as required by 40 CFR Part 265, Subpart G (relating to closure and postclosure).

*Financial institutions*—Banks and other similar establishments organized or authorized to transact business in this Commonwealth or the United States, and insurance companies or associations licensed and authorized to transact business in this Commonwealth or designated by the Insurance Commissioner as an eligible surplus lines insurer.

*Surety bond*—A penal bond agreement in a sum certain, payable to the Department, executed by the facility owner or operator, and which is supported by the guarantee of payment on the bond by a corporation licensed to do business as a surety in this Commonwealth.

*Surety company*—A corporation licensed to do business as a surety in this Commonwealth.

**§ 265a.143. Financial assurance for closure.**

40 CFR 265.143 (relating to financial assurance for closure) is not incorporated by reference except for 40 CFR 265.143(e) as referenced in § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure).

**§ 265a.145. Financial assurance for postclosure care.**

40 CFR 265.145 (relating to financial assurance for post-closure care) is not incorporated by reference except for 40 CFR 265.145(e) as referenced in § 265a.156 (relating to special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.)

**§ 265a.147. Liability requirements.**

The substitution of terms as specified in § 260a.3(a)(5) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 265.147(g)(2) and (i)(4) (relating to liability requirements).

**§ 265a.148. Incapacity of owners or operators, guarantors or financial institutions.**

In addition to the requirements incorporated by reference, an owner or operator or guarantor of a corporate guarantee shall also notify the Department by certified mail in accordance with the provisions applicable to notifying the regional administrator of the EPA.

**§ 265a.149. Use of State-required mechanisms.**

Relative to the requirements incorporated by reference, 40 CFR 265.149 (relating to use of state-required mechanisms) is not incorporated by reference.

**§ 265a.150. State assumption of responsibility.**

Relative to the requirements incorporated by reference, 40 CFR 265.150 (relating to State assumption of responsibility) is not incorporated by reference.

**§ 265a.153. Requirement to file a bond.**

(a) Hazardous waste storage, treatment and disposal facilities permitted under the act, or being treated as having a permit under the act, shall file a bond in accordance with this subchapter and in the amount determined by § 265a.160 (relating to bond amount determination), payable to the Department.

(b) The Department will not issue a new, revised, amended, modified or renewed permit for the storage, treatment or disposal of hazardous waste unless the applicant files with the Department a bond under this subchapter, payable to the Department, on a form prepared and provided by or approved by the Department, and the bond has been approved by the Department.

(c) An applicant for a new, revised, amended, modified or renewed permit may not disturb surface acreage, start construction of facilities for the storage, treatment or disposal of hazardous waste, or accept hazardous waste prior to receipt from the Department of approval of bond and issuance of a permit to conduct a hazardous waste storage, treatment or disposal operation.

(d) A hazardous waste storage, treatment or disposal facility permitted or treated as issued a permit, shall cease accepting hazardous waste unless the owner or operator has submitted a bond under this subchapter. The Department will review and determine whether or not to approve the bond within 1 year of the submittal. If, on review, the Department determines the owner or operator has submitted an insufficient bond amount, the Depart-

ment will require the owner or operator to deposit additional bond amounts under § 265a.162 (relating to bond amount adjustments).

**§ 265a.154. Form, terms and conditions of bond.**

(a) The Department accepts the following types of bond:

- (1) A surety bond.
  - (2) A collateral bond.
  - (3) A phased deposit collateral bond as provided in § 265a.157 (relating to phased deposits of collateral).
- (b) The Department prescribes and furnishes the forms for bond instruments.

(c) Bonds are payable to the Department and conditioned upon the faithful performance of the requirements of the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), the regulations adopted thereunder, the terms and conditions of any permit issued thereunder, orders of the Department and amendments, revisions and changes to the acts, the regulations and the terms and conditions of the hazardous waste storage, treatment and disposal facility permit as may be lawfully made in the future.

(d) The bond shall cover the hazardous waste storage, treatment or disposal operations from the initiation of the operations until the bond is released as provided in this chapter. The bond shall cover all operations and activities conducted within the permitted area and all effects caused by the hazardous waste activities within or without the permit area. An owner or operator of a new facility shall submit the bond to the Department at least 60 days before the date that hazardous waste is first received for treatment, storage or disposal.

(e) Bonds will be reviewed for legality and form according to established Commonwealth procedures.

**§ 265a.155. Special terms and conditions for surety bonds.**

(a) The Department does not accept the bond of a surety company that failed or unduly delayed in making payment on a forfeited surety bond.

(b) The Department accepts only the bond of a surety authorized to do business in this Commonwealth and which is listed in Circular 570 of the United States Department of Treasury.

(c) The surety may cancel the bond by sending written notice of cancellation by certified mail to the owner or operator and the Department. Cancellation may not take effect until 120 days after receipt of the notice of cancellation by the principal and the Department, as evidenced by the return receipts. Within 60 days after receipt of the notice of cancellation, the owner or operator shall provide the Department with a replacement bond under § 265a.158 (relating to replacement of bond). Failure of the owner or operator to provide a replacement bond within the 60-day period constitutes grounds for forfeiture of the existing bond under § 265a.168 (relating to bond forfeiture).

(d) The Department does not accept surety bonds from a surety company for an owner or operator, on all facilities owned or operated by the owner or operator, in excess of the company's single risk limit as provided by The Insurance Company Law of 1921 (40 P. S. §§ 341—

991), unless the surety has complied with the provisions of The Insurance Company Act of 1921 (40 P. S. §§ 1—297.4) for accepting risk above its single risk limit.

(e) The bond shall provide that full payment will be made on the bond within 30 days of receipt of a notice of forfeiture by the surety notwithstanding judicial or administrative appeal of the forfeiture and that the amount is confessed to judgment upon forfeiture.

(f) The bond shall provide that the surety and the owner or operator are joint and severally liable for payment of the bond amount.

**§ 265a.156. Special terms and conditions for collateral bonds and bonds pledging corporate guarantee for closure.**

(a) The Department obtains possession and keeps custody of collateral deposited by the owner or operator until authorized for release or replacement as provided in this subchapter.

(b) The Department values governmental securities for both current market value and face value. For the purpose of establishing the value of the securities for bond deposit, the Department uses the lesser of current market value or face value. Government securities shall be rated at least BBB by Standard and Poor's or Baa by Moody's.

(c) Collateral bonds pledging Pennsylvania bank certificates of deposit are subject to the following conditions:

(1) The Department requires that certificates of deposit be assigned to the Department, in writing, and the assignment recorded upon the books of the issuing institution.

(2) The Department may accept an individual certificate of deposit for the maximum insurable amount as determined by the Federal Deposit Insurance Corporation (FDIC) and which is otherwise secured under Pennsylvania law.

(3) The Department requires the issuing institution to waive all rights of setoff or liens which it has or might have against the certificates.

(4) The Department only accepts automatically-renewable certificates of deposit.

(5) The Department requires that the certificates of deposit be assigned to the Department to assure that the Department can liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond determined under this subchapter.

(6) The Department only accepts certificates of deposit only from banks or banking institutions licensed, chartered or otherwise authorized to do business in the United States.

(7) The Department does not accept certificates of deposit from banks that failed or delayed to make payment on defaulted certificates of deposit.

(d) Collateral bonds pledging a letter of credit are subject to the following conditions:

(1) The letter of credit is a standby letter of credit issued only by a bank organized or authorized to do business in the United States, examined by a state or Federal agency and Federally insured or equivalently protected.

(2) The letter of credit may not be issued without a credit analysis substantially equivalent to that of a potential borrower in an ordinary loan situation. A letter

of credit so issued is supported by the customer's unqualified obligation to reimburse the issuer for moneys paid under the letter of credit.

(3) The letter of credit may not be issued when the amount of the letter of credit, aggregated with other loans and credits extended to the owner or operator, exceeds the issuer legal lending limits for that owner or operator as defined in the United States Banking Code (12 U.S.C.A. §§ 21—220).

(4) The letter of credit is irrevocable and is so designated. The Department may accept a letter of credit for which at least a 1 year period is stated if the following conditions are met and are stated in the credit:

(i) The letter of credit is automatically renewable for additional time periods of at least 1 year, unless the bank gives at least 120 days prior written notice by certified mail to the Department and the customer of its intent to terminate the credit at the end of the current time period.

(ii) The Department has the right to draw upon the credit before the end of the time period, if the customer fails to replace the letter of credit with other acceptable bond guarantee within 30 days of the bank's notice to terminate the credit.

(5) Letters of credit shall name the Department as the beneficiary and be payable to the Department, upon demand, in part or in full, upon presentation of the Department's drafts at sight. The Department's right to draw upon the letter of credit will not require documentary or other proof by the Department that the customer has violated the conditions of the bond, the permit or another requirement of this subchapter.

(6) Letters of credit are subject to 13 Pa.C.S. (relating to the Uniform Commercial Code) and the latest revision of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce. The Department may accept 13 Pa.C.S. Division 5 (relating to letters of credit) in effect in the state of the issuer.

(7) The issuing bank waives the rights to setoff or liens it has or might have against the letter of credit.

(8) The Department will not accept letters of credit from a bank that failed or delayed in making payment on a letter of credit previously submitted as collateral to the Department.

(e) Bonds pledging a corporate guarantee for closure shall be subject to the requirements of 40 CFR 265.143(e) (relating to financial test and corporate guarantee for closure) and 40 CFR 265.145(e) (relating to financial assurance for post-closure care) except for the provision of 40 CFR 265.143(e)(10)(i) (relating to financial assurance for closure) as specified in § 264a.143(a) (relating to financial assurance for closure). This is replaced by the procedures of § 265a.168 (relating to replacement of bond).

#### **§ 265a.157. Phased deposits of collateral.**

(a) A permit applicant, or an owner or operator may post a collateral bond in phased deposits for a hazardous waste storage, treatment or disposal facility that will be continuously operated or used for at least 10 years from the date of issuance of the permit or permit amendment, according to all of the following requirements:

(1) The owner or operator submits a collateral bond form to the Department.

(2) The owner or operator deposits \$10,000 or 25%, whichever is greater, of the total amount of bond determined in this chapter in approved collateral with the Department.

(3) The owner or operator submits a schedule agreeing to deposit 10% of the remaining amount of bond, in approved collateral in each of the next 10 years.

(b) The permit applicant or owner or operator deposits the full amount of bond required for the hazardous waste storage, treatment or disposal facility within 30 days of receipt of a written demand by the Department to accelerate deposit of the bond. The Department makes the demand when one of the following occurs:

(1) The owner or operator fails to make a deposit of bond amount when required by the schedule for the deposits.

(2) The owner or operator violates the requirements of the act, this article, the terms and conditions of the permit or orders of the Department and has failed to correct the violations within the time required for the correction.

(c) Interest earned by collateral on deposit accumulates and becomes part of the bond amount until the owner or operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest so accumulated may not offset or diminish the amount required to be deposited in each of the succeeding years set forth in the schedule of deposit, except that in the last year in which a deposit is due, the amount to be deposited is adjusted by applying the total accumulated interest to the amount to be deposited as established by the schedule of deposit.

#### **§ 265a.158. Replacement of bond.**

(a) The Department may allow owners or operators to replace existing surety or collateral bonds with other surety or collateral bonds if the liability accrued against the owner or operator of the hazardous waste storage, treatment or disposal facility is transferred to the replacement bonds. The bond amount for the replacement bond as determined under this chapter, may not be less than the amount on deposit with the Department.

(b) The Department will not release existing bonds until the owner or operator submits and the Department has approved acceptable replacement bonds. A replacement of bonds under this section may not constitute a release of bond under this subchapter.

(c) Within 60 days of approval of acceptable replacement bonds, the Department will take appropriate action to initiate the release of existing surety or collateral bonds being replaced by the owner or operator.

#### **§ 265a.159. Reissuance of permits.**

Before a permit is reissued to a new owner or operator, the new owner or operator shall post a new bond in an appropriate amount determined by the Department under this subchapter but in no case less than the amount of bond on deposit with the Department, in the new owner's or operator's name, assuming all accrued liability for the hazardous waste storage, treatment or disposal facility.

#### **§ 265a.160. Bond amount determination.**

(a) The Department determines bond amount requirements for each hazardous waste storage, treatment and disposal facility based upon the total estimated cost to the Commonwealth to complete final closure of the facility. This is done in accordance with the requirements of applicable statutes, this article, the terms and conditions

of the permit and orders issued thereunder by the Department and to take measures that are necessary to prevent adverse effects upon the environment during the life of the facility and after closure until released as provided by this subchapter.

(b) This amount is based on the owner's or operator's written estimate submitted under 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for post-closure care).

**§ 265a.162. Bond amount adjustments.**

The owner or operator shall deposit additional amounts of bond within 60 days of any of the following:

(1) The permit is amended to increase acreage, to change the kind of waste handled or for another reason that requires an additional amount of bond determined under 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and cost estimate for postclosure care).

(2) Inflationary cost factors exceed the estimate used for the original bond amount determination under 40 CFR 265.142 and 265.144.

(3) The permit is to be renewed or reissued, or the bond on deposit is to be replaced, requiring an additional amount of bond determined under 40 CFR 265.142 and 265.144.

(4) An additional amount of bond is required as determined by 40 CFR 265.142 and 265.144 to meet the requirements of applicable statutes, this subchapter and the terms and conditions of the permit or orders of the Department.

**§ 265a.163. Failure to maintain adequate bond.**

If an owner or operator fails to post additional bond within 60 days after receipt of a request by the Department for additional bond amounts under § 265a.162 (relating to bond amount adjustments), or fails to make timely deposits of bond in accordance with the schedule submitted under § 265a.157 (relating to phased deposits of collateral), the Department will issue a notice of violation to the owner or operator, and if the owner or operator fails to deposit the required bond amount within 15 days of the notice, the Department will issue a cessation order for all of the hazardous waste storage, treatment and disposal facilities operated by the owner or operator and take additional actions that may be appropriate, including suspending or revoking permits.

**§ 265a.164. Separate bonding for a portion of a facility.**

(a) The Department may require a separate bond to be posted for a part of a hazardous waste storage, treatment or disposal facility if that part of the facility can be separated and identified from the remainder of the facility and the bond liability for that part will continue beyond the time provided for the remainder of the facility, or the Department determines that separate bonding of the facility is necessary to administer and apply applicable statutes, this article, the terms and conditions of the permit or orders of the Department.

(b) If the Department requires a separate bond for part of a facility, the original bond amount for the facility may be adjusted under § 265a.162 (relating to bond amount adjustments).

**§ 265a.165. Bond release.**

(a) The owner or operator may file a written application with the Department requesting release of all or part

of the bond amount posted for a hazardous waste storage, treatment or disposal facility. The bond release may be requested during the operation of the facility as part of a request for bond adjustment under § 265a.162 (relating to bond amount adjustments); upon completion of closure for a storage or treatment facility and upon expiration of the postclosure care period of liability, for a disposal facility as specified in 40 CFR Part 265, Subpart G (relating to closure and postclosure care).

(b) The application for bond release shall contain the following:

(1) The name of the owner or operator and shall identify the hazardous waste storage, treatment or disposal facility for which bond release is sought.

(2) The total amount of bond in effect for the facility and the amount for which release is sought.

(3) The reasons why, in specific detail, bond release is requested, including, but not limited to, the closure, postclosure care and abatement measures taken, the permit amendments authorized or the change in facts or assumptions made during the bond amount determination which demonstrate and would authorize a release of part or all of the bond deposited for the facility.

(4) Provide a revised cost estimate for closure and postclosure care in accordance with 40 CFR 265.142 and 265.144 (relating to cost estimate for closure; and post-closure care).

(5) Closure or postclosure certification for full bond release requests.

(6) Provide other information as may be required by the Department.

(c) The Department will evaluate the bond release request as if it were a request for a new bond amount determination under 40 CFR 265.142 and 265.144. If the new bond amount determination would require less bond for the facility than the amount already on deposit, the Department will release the portion of the bond amount which is not required for the facility. If the new bond amount determination would require an additional amount of bond for the facility, the Department will require the additional amount to be deposited for the facility.

(d) The Department will not release a bond amount deposited for a facility if the release would reduce the total remaining amount of bond to an amount which would be insufficient for the Department to complete closure and postclosure care and to take measures that may be necessary to prevent adverse effects upon the environment or public health, safety or welfare in accordance with applicable statutes, this chapter, the terms and conditions of the permits and orders of the Department.

(e) The Department will make a decision on a bond release application within 6 months after receipt unless additional time is authorized by the owner or operator.

(f) The Department will not release a bond amount for a facility which is causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or is in violation of this chapter, the act or the statutes in section 505(a) of the act (35 P. S. § 6018.505).

**§ 265a.166. Closure and postclosure certification.**

(a) The owner or operator shall submit a request for closure certification upon completion of closure of the facility in accordance with the provisions of 40 CFR

265.115 and 265.120 (relating to certification of closure; and certification of completion of postclosure care).

(b) Within 60 days after receipt of a written request for closure or postclosure certification, the Department will initiate an inspection of the facility to verify that closure was effected in accordance with the approved facility closure or postclosure care plan and this article.

(c) If the Department determines that the facility closed in accordance with this article, and that there is no reasonable expectation of adverse effects upon the environment or the public health, safety and welfare, the Department will certify in writing to the owner or operator that closure or postclosure effected in accordance with this subchapter. Closure or postclosure certification may not take effect until 1 year after receipt of the Department's determination.

(d) The closure or postclosure certification does not constitute a waiver or release of bond liability or other liability existing in law for adverse environmental conditions or conditions of noncompliance existing at the time of the notice or which might occur at a future time, for which the owner or operator shall remain liable.

(e) The Department will not issue a closure or postclosure certification for a facility causing adverse effects on the public health, safety or welfare or the environment, creating a public nuisance, or is in violation of this article, the act or the statutes set forth in section 505(a) of the act (35 P. S. § 6018.505(a)).

(f) At any time after issuance of a certification of closure or postclosure, if inspection by the Department indicates that additional postclosure care measures are required to abate or prevent any adverse effects upon the environment or the public health, safety and welfare, the Department will issue a written notice to the owner or operator setting forth the schedule of measures which the owner or operator shall take in order to bring the facility into compliance.

(g) At least 6 months prior to expiration of the 1 year liability period following closure and postclosure care, the Department will conduct an inspection of the facility. If the Department determines that the facility will continue to cause adverse effects upon the environment or the public health, safety and welfare after expiration of the 1 year liability period, the Department will require the owner or operator to deposit a separate bond under § 265a.164 (relating to separate bonding for a portion of a facility), or forfeit the bond under § 264a.168 (relating to bond forfeiture) on deposit with the Department.

**§ 265a.167. Public notice and comment.**

The original bond amount determination, a decision by the Department to release bond, a request to reduce bond amount after permit issuance and a request for closure or postclosure certification shall be, for the purpose of providing public notice and comment, considered a permit modification and shall be subject to the public notice and comment requirements for Class 3 permit modifications.

**§ 265a.168. Bond forfeiture.**

(a) The Department will forfeit the bond for a hazardous waste storage, treatment or disposal facility when it determines that any of the following occur:

(1) The owner or operator fails and continues to fail to conduct the hazardous waste storage, treatment or disposal activities in accordance with this article, the act, the statutes in section 505(a) of the act (35 P. S. § 6018.505(a)), the terms and conditions of the permit or orders of the Department.

(2) The owner or operator abandons the facility without providing closure or postclosure care, or otherwise fails to properly close the facility in accordance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit or orders of the Department.

(3) The owner or operator fails, and continues to fail to take those measures determined necessary by the Department to prevent effects upon the environment before, during and after closure and postclosure care.

(4) The owner or operator or financial institution becomes insolvent, fails in business, is adjudicated bankrupt, a delinquency proceeding is initiated under Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63), files a petition in bankruptcy, in liquidation, for dissolution or for a receiver, or has a receiver appointed by the court, or had action initiated to suspend, revoke or refuse to renew the license or certificate of authority of the financial institution, or a creditor of the owner or operator attaches or executes a judgment against the owner's or operator's equipment, materials or facilities at the permit area or on the collateral pledged to the Department; and the owner or operator or financial institution cannot demonstrate or prove the ability to continue to operate in compliance with this article, the act, the statutes in section 505(a) of the act, the terms and conditions of the permit and orders of the Department.

(b) If the Department determines that bond forfeiture is appropriate, the Department will do the following:

(1) Send written notification by mail to the owner or operator, the host municipality and the surety on the bond, if any, of the Department's determination to forfeit the bond and the reasons for the forfeiture.

(2) Advise the owner or operator and surety, if any, of their right to appeal to the EHB under section 1921-A of The Administrative Code of 1929 (71 P. S. § 510-21).

(3) Proceed to collect on the bond as provided by applicable statutes for the collection of defaulted bonds or other debts.

(4) Deposit all money collected from defaulted bonds into the Solid Waste Abatement Fund.

(5) Forfeit all bond deposited for the facility, including all additional amounts of bond posted for the facility.

**§ 265a.169. Preservation of remedies.**

Remedies provided or authorized by law for violation of statutes, including but not limited to, the act, The Clean Streams Law (35 P. S. §§ 691.1—691.1001), the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19c), the Air Pollution Control Act (35 P. S. §§ 4001—4015), the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), this article, the terms and conditions of permits and orders of the Department, are expressly preserved. Nothing in this chapter may be construed as an exclusive penalty or remedy for the violations. An action taken under this subchapter may not waive or impair another remedy or penalty provided in law.

**Subchapter I. Use and Management of Containers**

- Sec.
- 265a.173. Management of containers.
- 265a.175. Containment and collection system.
- 265a.179. Containment.

**§ 265a.173. Management of containers.**

In addition to the requirements incorporated by reference:

(1) For indoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles.

(2) For outdoor storage of reactive or ignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles. In addition, a 40-foot setback from a building shall be maintained for all outdoor container storage or reactive or ignitable hazardous waste.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the container height, width and depth of a group of containers shall provide a configuration and aisle spacing which insures safe management and access for purposes of inspection, containment and remedial action with emergency vehicles.

**§ 265a.175. Containment and collection system.**

(a) Container storage areas shall have a containment system capable of collecting and holding spills, leaks and precipitation. The containment system shall:

(1) Have an impervious base underlying the containers which is free of cracks or gaps so as to contain leaks, spills and accumulated rainfall. All joints in an impervious base shall be sealed with appropriate sealants.

(2) Provide efficient drainage from the base to a sump or collection system.

(3) Have sufficient capacity to contain the entire volume of the largest container, or 10% of the total volume of all the containers, whichever is greater.

(b) Run-on into the containment system shall be prevented.

(c) Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection system with sufficient frequency to prevent overflow.

(d) At closure, all hazardous waste and hazardous waste residues shall be removed from the containment and collection systems. Remaining containers, liners, bases and soil containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or removed.

(e) Storage of flowable liquid wastes—less than 20% solids by dry weight and flowable—in containers of less than 110 gallons capacity shall be in accordance with the following criteria, unless otherwise approved by the Department:

(1) For indoor storage of reactive or ignitable hazardous waste, the total maximum container height shall not exceed 6 feet. The containers shall be grouped so that the maximum width and depth of a group is no greater than the area that would contain four 55-gallon drums wide by four 55-gallon drums deep—approximately 8 feet by 8 feet—or the containers shall be grouped so that the maximum width of a group is no greater than the area that would contain two 55-gallon drums deep, with the length of the group so limited that at least a 5 foot wide aisle surrounds the group. Each 8 foot by 8 foot group shall be separated by at least a 5 foot wide aisle.

(2) For outdoor storage of reactive or ignitable hazardous waste, the total container height may not exceed 9 feet. The maximum width and depth of a group of

containers may not exceed the equivalent of eight 55-gallon drums wide by eight 55-gallon drums deep. Each group shall be separated by at least a 5 foot wide aisle from any adjacent group. A main aisle or accessway at least 12 feet wide shall be maintained through a container storage area. A minimum 40-foot setback from a building shall be maintained for all outdoor container storage of reactive or ignitable hazardous wastes.

(3) For indoor or outdoor storage of nonreactive or nonignitable hazardous waste, the total container height may not exceed 9 feet. The maximum width and depth of a group of containers shall provide a configuration and aisle space which insures access for purposes of inspection, containment and remedial action with emergency vehicles. The configuration shall be specified in the permit application and shall be approved in writing by the Department.

**§ 265a.179. Containment.**

40 CFR 264.175 (relating to containment) is incorporated by reference.

**Subchapter J. TANK SYSTEMS**

Sec.

265a.191. Assessment of existing tank system's integrity.

265a.193. Containment and detection of releases.

265a.194. General operating requirements.

265a.195. Inspections.

**§ 265a.191. Assessment of existing tank system's integrity.**

In addition to the requirements incorporated by reference, by January 17, 1994, an owner or operator of tanks or tank systems shall obtain and keep on file at the facility a written assessment of the tank or tank system's integrity in accordance with the provisions of 40 CFR 265.191 (relating to assessment of existing tank system's integrity).

**§ 265a.193. Containment and detection of releases.**

In addition to the requirements incorporated by reference, owners or operators of existing tank systems shall comply with 40 CFR 265.193 (relating to containment and detection of releases) by January 16, 1995, except that owners and operators of existing tank systems for which the age cannot be documented, shall comply with 40 CFR 265.193 by January 16, 1996.

**§ 265a.194. General operating requirements.**

In addition to the requirements incorporated by reference, tanks shall be labeled to accurately identify their contents.

**§ 265a.195. Inspections.**

In addition to the requirements incorporated by reference, the tank or tank system shall be inspected every 72 hours when not operating, if waste remains in the tank or tank system components.

**Subchapter P. THERMAL TREATMENT**

Sec.

265a.382. Open burning; waste explosives.

**§ 265a.382. Open burning; waste explosives.**

In addition to the requirements incorporated by reference, the open burning of waste explosives as specified in 40 CFR 265.382 (relating to open burning; waste explosives) is not permitted in air basins as defined in § 121.1 (relating to definitions).



**CHAPTER 266. (Reserved)**

§§ 266.20—266.24. (Reserved).

§§ 266.30—266.35. (Reserved).

§§ 266.40—266.44. (Reserved).

§ 266.70. (Reserved).

§ 266.80. (Reserved).

§ 266.90. (Reserved).

§ 266.91. (Reserved).

§§ 266.100—266.104. (Reserved).

§§ 266.201—266.206. (Reserved).

§§ 266.210—266.220. (Reserved).

§§ 266.230—266.240. (Reserved).

§§ 266.250—266.256. (Reserved).

§§ 266.260—266.262. (Reserved).

§ 266.270. (Reserved).

§§ 266.280—266.283. (Reserved).

**CHAPTER 266a. MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES**

**Subchap.**

- C. RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL
- E. WASTE OIL BURNED FOR ENERGY RECOVERY
- F. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY
- G. SPENT LEAD-ACID BATTERIES BEING RECLAIMED
- H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES

**Subchapter C. RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL**

**Sec.**

266a.20. Incorporation by reference and applicability.

**§ 266a.20. Incorporation by reference and applicability.**

Except as expressly provided in this chapter, 40 CFR Part 266 and its appendices (relating to standards for the management of specific hazardous wastes; and specific types of hazardous waste management facilities) are incorporated by reference.

**Subchapter E. WASTE OIL BURNED FOR ENERGY RECOVERY**

**Sec.**

- 266a.40. Applicability.
- 266a.41. Prohibitions.
- 266a.42. Generators of waste oil burned for energy recovery.
- 266a.43. Marketers of waste oil burned for energy recovery.
- 266a.44. Burners of waste oil burned for energy recovery.

**§ 266a.40. Applicability.**

(a) *General.* Unless otherwise stated in this section, this subchapter applies to waste oil that is burned for energy recovery in a unit that is not regulated under 40 CFR Part 264, Subpart 0; 40 CFR Part 265, Subpart 0; Chapter 264a, Subchapter O or Chapter 265a, Subchapter O, except as provided by subsections (c) and (e). The waste oil is termed "waste oil fuel." Waste oil fuel includes fuel produced from waste oil by processing, blending or other treatment.

(b) *Heating value and permit requirements.*

(1) Waste oil having less than 8,000 Btus per pound is not a fuel, and if hazardous, may be burned only in a hazardous waste incinerator, or a boiler or industrial furnace regulated under 40 CFR Part 266, Subpart H

(relating to hazardous waste burned in boilers and industrial furnaces) or Chapter 266a, Subchapter H (relating to hazardous waste burned in boilers and industrial furnaces).

(2) Except as provided in subsection (d), the blending or mixing of waste oils that are hazardous under Chapter 261a (relating to criteria, identification and listing of hazardous waste) is allowed only under a hazardous waste treatment permit. This does not preclude a generator from storing compatible waste oils in a single tank prior to disposal or recycling. Waste oil that is either nonhazardous or that is identified in subsection (d) may be blended or mixed with other nonhazardous waste oil under a residual waste processing permit.

(c) *Waste oil mixed with hazardous waste.* Except as provided by subsection (d)(2), waste oil that is mixed with hazardous waste and burned for energy recovery is subject to regulation as hazardous waste fuel under 40 CFR Part 266, Subpart H or Chapter 266a, Subchapter H.

(d) *Waste oil burned for energy recovery.* Waste oil burned for energy recovery is subject to regulation under this subchapter rather than as hazardous waste fuel if it is a hazardous waste solely because it does one of the following:

(1) Exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C (relating to characteristics of hazardous waste) or Chapter 261a, Subchapter C (relating to characteristics of hazardous waste), if it is not mixed with a hazardous waste.

(2) Contains hazardous waste generated only by a person subject to the special requirements for conditionally exempt small quantity generators under 40 CFR 261.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators) or § 261a.5 (relating to special requirements for hazardous waste generated by conditionally exempt small quantity generators).

(e) *Waste oil burned for energy recovery and fuel produced from waste oil.* Waste oil burned for energy recovery, and fuel produced from waste oil by processing, blending or other treatment, is subject to this subchapter unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in the following table. Waste oil fuel that does not exceed the specifications in the following table is termed "on-specification waste oil fuel" and is subject only to the requirements of this section and the analysis and recordkeeping requirements under § 266a.43(b)(1) and (6) (relating to marketers of waste oil burned for energy recovery). Waste oil fuel that exceeds any specification level is termed "off-specification waste oil fuel" and subject to the requirements of this subchapter. Applicable standards for burning used oil containing PCBs are imposed by 40 CFR 761.20(e) (relating to prohibitions for PCBs).

<i>Constituent/Property</i>	<i>Allowable Level</i>
Arsenic	Maximum 5 ppm
Cadmium	Maximum 2 ppm
Chromium	Maximum 10 ppm
Lead	Maximum 100 ppm
Total halogens	Maximum 1,000 ppm
Flash point	Minimum 100°F (38°C)

(f) Storage and transportation of waste oil fuel shall comply with Chapter 299 (relating to the storage and transportation of residual waste).

(g) Burners of waste oil fuel shall comply with the applicable residual waste permitting requirements for the burning of waste oil in Chapter 287 (relating to residual waste management—general provisions).

**§ 266a.41. Prohibitions.**

(a) A person may market off-specification waste oil for energy recovery only to burners:

(1) Or other marketers who have notified the EPA and the Department of their waste oil management activities stating the location and general description of the activities, and who have an EPA identification number.

(2) Who burn the waste oil in an industrial furnace or boiler identified in subsection (b) and have a plan approval and operating permit issued under Chapter 127 (relating to construction, modification, reactivation and operation of sources) from the Bureau of Air Quality Control, or written approval from the Bureau of Air Quality Control if the fuel is burned in Allegheny or Philadelphia Counties if Allegheny or Philadelphia County is issued first.

(b) Off-specification waste oil may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in 40 CFR 260.10 (relating to definitions) or § 260a.10 (relating to definitions).

(2) Boilers, as defined in 40 CFR 260.10 or § 260a.10, that are identified as one of the following:

(i) An industrial boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(ii) A utility boiler used to produce electric power, steam or heated or cooled air or other gases or fluids for sale.

(3) A waste oil-fired space heater if:

(i) The heater burns only waste oil that the owner or operator generates or waste oil received from do-it-yourself oil changers who generate waste oil as household waste.

(ii) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour.

(iii) The combustion gases from the heater are vented to the ambient air.

**§ 266a.42. Generators of waste oil burned for energy recovery.**

(a) Except as provided in subsections (b) and (c), a generator of waste oil is not subject to this subchapter.

(b) A generator who markets waste oil directly to a burner is subject to § 266a.43 (relating to standards applicable to marketers of waste oil burned for energy recovery).

(c) A generator who burns waste oil is subject to § 266a.44 (relating to standards applicable to burners of waste oil burned for energy recovery).

**§ 266a.43. Marketers of waste oil burned for energy recovery.**

(a) A person who markets waste oil fuel is termed a "marketer." Except as provided in this section, a marketer includes a generator who markets waste oil fuel directly to a burner, a person who receives waste oil from a generator and produces, processes or blends waste oil fuel from these waste oils, including a person sending blended

or processed waste oil to a broker or other intermediary and a person who distributes but does not process or blend waste oil fuel. The following persons are not marketers subject to this subchapter:

(1) A waste oil generator and collector who transports waste oil received only from a generator, unless the generator or collector markets the waste oil directly to a person who burns it for energy recovery. A person who burns some waste oil fuel for purposes of processing or other treatment to produce waste oil fuel for marketing is considered to be burning incidentally to processing. A generator and collector who markets to incidental burners is not a marketer subject to this subchapter.

(2) A person who markets only waste oil fuel that meets the specification under § 266a.40(e) (relating to applicability) and who is not the first person to claim the oil meets the specification; that is, a marketer who does not receive waste oil from a generator or initial transporter and marketer who neither receives nor markets off-specification waste oil fuel.

(b) A marketer is subject to the following requirements:

(1) *Analysis of waste oil fuel.* Waste oil fuel is subject to this subchapter unless the marketer obtains analyses or other information documenting that the waste oil fuel meets the specification under § 266a.40(e).

(2) *Prohibitions.* The prohibitions under § 266a.41(a) (relating to prohibitions) apply.

(3) *Notification.* Notification shall be made to the EPA and the Department stating the location and general description of waste oil management activities. If a marketer has previously notified the EPA or the Department of HWM activities under section 3010 of RCRA (42 U.S.C.A. § 6930) and obtained an EPA identification number, the marketer shall renotify to identify his waste oil management activities.

(4) *Invoice system.*

(i) When a marketer initiates a shipment of off-specification waste oil, the marketer shall prepare and send the receiving facility an invoice containing the following information:

(A) An invoice number.

(B) The marketer's own EPA identification number and the EPA identification number of the receiving facility.

(C) The names and addresses of the shipping and receiving facilities.

(D) The quantity of off-specification waste oil to be delivered.

(E) The dates of shipment or delivery.

(F) The following statement: "This waste oil is subject to Pennsylvania Department of Environmental Protection regulation under 25 Pa. Code 266a and/or U.S. EPA regulation under 40 CFR Part 266."

(ii) Waste oil that meets the definition of "hazardous material" in 49 CFR 171.8 (relating to definitions and abbreviations) shall be shipped in accordance with the applicable United States Department of Transportation Hazardous Materials Regulations at 49 CFR Parts 171—180 (relating to research and special programs administration, Department of Transportation).

(5) *Required notices.*

(i) Before a marketer initiates the first shipment of off-specification waste oil to a burner or other marketer,

the marketer shall obtain a one-time written and signed notice from the burner or marketer certifying that:

(A) The burner or marketer has notified the EPA and the Department stating the location and general description of the waste oil management activities.

(B) If the recipient is a burner, the burner will burn the off-specification waste oil only in an industrial furnace or boiler identified in § 266a.41(b).

(ii) Before a marketer accepts the first shipment of off-specification waste oil from another marketer subject to the requirements of this section, the marketer shall provide the marketer with a one-time written and signed notice certifying that the marketer has notified the EPA and the Department of his waste oil management activities.

(6) *Recordkeeping.*

(i) *Waste oil fuel that meets the specification.* A marketer who first claims under subsection (b)(1) that waste oil fuel meets the specification shall keep copies of analyses, or other information relied upon to make the determination, of waste oil for 3 years. The waste oil fuel is not subject to further regulation unless it is subsequently mixed with hazardous waste or mixed with waste oil so that it no longer meets the specification. The marketers shall also record in an operating log and keep for 3 years the following information on each shipment of waste oil fuel that meets the specification:

(A) The name and address of the facility receiving the shipment.

(B) The quantity of waste oil fuel delivered.

(C) The date of shipment or delivery.

(D) A cross reference to the record of waste oil analysis, or other information relied upon to make the determination that the oil meets the specification, required under this subparagraph.

(ii) *Off-specification waste oil fuel.* A marketer who receives or initiates an invoice under the requirements of this section shall keep a copy of each invoice for 3 years from the date the invoice is received or prepared. In addition, a marketer shall keep a copy of each certification notice that the marketer receives or sends for 3 years from the date the marketer last engages in an off-specification waste oil fuel marketing transaction with the person who sends or receives the certification notice.

**§ 266a.44. Burners of waste oil burned for energy recovery.**

An owner or operator of a facility that burns waste oil fuel is a "burners" and is subject to the following requirements:

(1) *Prohibition.* The prohibition under § 266a.41(b) (relating to prohibitions) applies.

(2) *Notification.* A burner of off-specification waste oil fuel and burner of waste oil fuel who is the first to claim that the oil meets the specification provided under § 266a.40(e) (relating to applicability), except a burner who burns specification oil that he generates, shall notify the EPA and the Department stating the location and general description of waste oil management activities. A burner of waste oil fuel that meets the specifications who receives the oil from a marketer that previously notified the EPA and the Department is not required to notify. An owner or operator of a waste oil-fired space heater that burns waste oil fuel under § 266a.41(b)(2) is exempt from this notification requirement. Even if a burner has previ-

ously notified the EPA and the Department of HWM activities under section 3010 of RCRA (42 U.S.C.A. § 6930) and obtained an identification number, the burner shall renotify to identify his waste oil management activities.

(3) *Required notices.* Before a burner accepts the first shipment of off-specification waste oil fuel from a marketer, the burner shall provide the marketer a one-time written and signed notice certifying that:

(i) The burner has notified the EPA and the Department stating the location and general description of the waste oil management activities.

(ii) The burner will burn the waste oil only in an industrial furnace or boiler identified in § 266a.41(b).

(4) *Waste oil fuel analysis.*

(i) Waste oil fuel burned by the generator is subject to this subchapter unless the burner obtains analysis (or other information) documenting that the waste oil meets the specification provided under § 266a.40(e).

(ii) Burners who treat off-specification waste oil fuel by processing, blending or other treatment to meet the specification provided under § 266a.40(e) shall obtain analyses or other information that documents the waste oil meets the specification.

(5) *Recordkeeping.* A burner who receives an invoice under the requirements of this section shall keep a copy of each invoice for 3 years from the date the invoice is received. Burners shall also keep copies of analyses of waste oil fuel as may be required by paragraph (4) for 3 years. In addition, the burner shall keep a copy of each certification notice that he sends to a marketer for 3 years from the date the burner receives off-specification waste oil from that marketer.

**Subchapter F. RECYCLABLE MATERIALS UTILIZED FOR PRECIOUS METAL RECOVERY**

Sec. 266a.70. Applicability and requirements.

**§ 266a.70. Applicability and requirements.**

In addition to the requirements incorporated by reference:

(1) A transporter transporting recyclable materials utilized for precious metal recovery in accordance with 40 CFR Part 266, Subpart F (relating to recyclable materials utilized for precious metal recovery) is deemed to have a license for the transportation of those materials if the transporter complies with:

(i) The EPA identification number requirements of 40 CFR 263.11 (relating to EPA identification number).

(ii) The hazardous waste transporter fee requirements of § 263a.23 (relating to hazardous waste transportation fee).

(2) An owner or operator of facilities that treat recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F is subject to § 261a.6(c) (relating to requirements for recyclable materials) unless the owner or operator is eligible for a permit by rule for the treatment under § 270a.60(b)(6) (relating to permits by rule).

**Subchapter G. SPENT LEAD-ACID BATTERIES BEING RECLAIMED**

Sec. 266a.80. Applicability and requirements.

**§ 266a.80. Applicability and requirements.**

(a) In addition to the requirements incorporated by reference, the owner or operator of a facility treating spent, lead-acid batteries prior to the reclamation of spent lead-acid batteries is subject to the requirements of § 261a.6(c) (relating to requirements for recyclable materials) unless the owner or operator is eligible for a permit by rule for the treatment of the batteries under § 270a.60(b)(3) (relating to permits by rule).

(b) Sections 264a.82, 265a.82 and 270a.3 (relating to administration fees; and payment of fees) § 270a.3, do not apply to a facility that stores spent batteries before reclaiming them.

**Subchapter H. HAZARDOUS WASTE BURNED IN BOILERS AND INDUSTRIAL FURNACES**

Sec.  
266a.100. Applicability.

**§ 266a.100. Applicability.**

The reference to "Part 279 of this chapter" in 40 CFR 266.100(b)(1) (relating to applicability) is replaced with Chapter 266a, Subchapter E (relating to waste oil burned for energy recovery).

**CHAPTER 266b. UNIVERSAL WASTE MANAGEMENT****Subchap.**

- A. GENERAL
- B. STANDARDS FOR SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE
- C. STANDARDS FOR LARGE QUANTITY HANDLERS OF UNIVERSAL WASTE
- D. STANDARDS FOR UNIVERSAL WASTE TRANSPORTERS
- E. STANDARDS FOR DESTINATION FACILITIES

**Subchapter A. GENERAL**

Sec.  
266b.1. Incorporation by reference and scope.

**§ 266b.1. Incorporation by reference and scope.**

Except as expressly provided in this chapter, 40 CFR Part 273 (relating to standards for universal waste management) is incorporated by reference.

**Subchapter B. SMALL QUANTITY HANDLERS OF UNIVERSAL WASTE**

Sec.  
266b.10. Applicability.

**§ 266b.10. Applicability.**

In addition to the requirements incorporated by reference, a small quantity handler of universal waste complying with this subchapter is deemed to have a permit for the storage of universal wastes.

**Subchapter C. LARGE QUANTITY HANDLERS OF UNIVERSAL WASTES**

Sec.  
266b.30. Applicability.

**§ 266b.30. Applicability.**

(a) In addition to the requirements incorporated by reference, a large quantity handler of universal waste complying with this subchapter is deemed to have a permit for the storage of universal wastes.

(b) The substitution of terms in § 260a.3(a)(3) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 273.32(a)(3) and 273.40(b) and (c) (relating to notification; and exports).

**Subchapter D. UNIVERSAL WASTE TRANSPORTERS**

Sec.  
266b.50. Applicability.

**§ 266b.50. Applicability.**

(a) In addition to the requirements incorporated by reference, a universal waste transporter complying with this subchapter is deemed to have a license for the transportation of universal wastes.

(b) The substitution of terms in § 260a.3(a)(3) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 273.56 (relating to exports).

**Subchapter E. STANDARDS FOR DESTINATION FACILITIES**

Sec.  
266b.60. Applicability.

**§ 266b.60. Applicability.**

Relative to the requirements incorporated by reference, 40 CFR 273.60(b) (relating to applicability) is not incorporated by reference.

**CHAPTER 267. (Reserved)****§ 267.1. (Reserved).****§ 267.2. (Reserved).****§§ 267.11—267.30. (Reserved).****§§ 267.41—267.46. (Reserved).****§§ 267.51—267.62. (Reserved).****CHAPTER 268a. LAND DISPOSAL RESTRICTIONS**

Subchap.  
A. GENERAL

**Subchapter A. GENERAL**

Sec.  
268a.1. Incorporation by reference, purpose, scope and applicability.

**§ 268a.1. Incorporation by reference, purpose, scope and applicability.**

(a) Except as expressly provided in this chapter, 40 CFR Part 268 (relating to land disposal restrictions), except for 40 CFR 268.5, 268.6, 268.13, 268.42(b) and 268.44, and its appendices are incorporated by reference.

(b) Relative to the requirements incorporated by reference, the substitution of the term "EPA" in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 268.1(e)(3) (relating to purpose, scope and applicability), and the term "Administrator" in § 260a.3(a)(1) (relating to terminology and citations related to Federal regulations) does not apply to 40 CFR 268.40(b) (relating to applicability of treatment standards).

**CHAPTER 269. (Reserved)****§ 269.1. (Reserved).****§§ 269.11—269.14. (Reserved).****§§ 269.21—269.29. (Reserved).****§§ 269.41—269.50. (Reserved).****§§ 269.101—269.103. (Reserved).****§ 269.111. (Reserved).****§§ 269.121—269.124. (Reserved).****§ 269.131. (Reserved).****§ 269.132. (Reserved).**

- §§ 269.141—269.143. (Reserved).
- §§ 269.151—269.155. (Reserved).
- §§ 269.161—269.163. (Reserved).
- § 269.201. (Reserved).
- § 269.211. (Reserved).
- § 269.221. (Reserved).
- § 269.231. (Reserved).

**CHAPTER 269a. SITING**

*(Editor's Note: All of the existing text of Chapter 269 is being renumbered as Chapter 269a. No changes, except citation changes, are being proposed to the existing text of Chapter 269. All citations contained within the existing text of Chapter 269 are also being renumbered to reflect the numbering changes proposed in this regulation.)*

**CHAPTER 269a. SITING**

**Subchap.**

- A. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES
- B. CERTIFICATES OF PUBLIC NECESSITY
- C. HOST MUNICIPALITY FUND ALLOCATION

**Subchapter A. SITING HAZARDOUS WASTE TREATMENT AND DISPOSAL FACILITIES**

**GENERAL PROVISIONS**

**Sec.**

- 269a.1. Definitions.

**SCOPE AND APPLICABILITY**

- 269a.11. Scope and applicability.
- 269a.12. Phase I.
- 269a.13. Phase II.
- 269a.14. Distances.

**PHASE I EXCLUSIONARY CRITERIA**

- 269a.21. Water supply.
- 269a.22. Flood hazard areas.
- 269a.23. Wetlands.
- 269a.24. Oil and gas areas.
- 269a.25. Carbonate bedrock areas.
- 269a.26. National natural landmarks and historic places.
- 269a.27. Dedicated lands in public trust.
- 269a.28. Agricultural areas.
- 269a.29. Exceptional value waters.

**PHASE II CRITERIA**

- 269a.41. Water supply.
- 269a.42. Geology.
- 269a.43. Soils.
- 269a.44. Mineral bearing areas.
- 269a.45. Land use.
- 269a.46. Transportation standards.
- 269a.47. Safety standards.
- 269a.48. Proximity of facilities and structures.
- 269a.49. Economic criteria.
- 269a.50. Environmental assessment considerations.

**GENERAL PROVISIONS**

**§ 269a.1. Definitions.**

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

*Active water supply*—A water supply in use prior to both the receipt of a permit application and the establishment of a public participation program for a hazardous waste management facility.

*Facility site*—All contiguous land owned or under the control of an owner or operator of a hazardous waste facility and identified in a permit or permit application.

*Wetland*—An area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted

for life in saturated soil conditions, including swamps, marshes, bogs and similar areas. The term includes, but is not limited to, wetland areas listed in the State Water Plan, the United States Forest Service Wetlands Inventory of Pennsylvania, the Pennsylvania Coastal Zone Management Plan, the United States Fish and Wildlife National Wetland Inventory and wetland areas designated by a river basin commission.

(b) All other words and terms not defined in this subchapter have the meanings ascribed to them in § 260a.10 (relating to definitions).

**SCOPE AND APPLICABILITY**

**§ 269a.11. Scope and applicability.**

The requirements of this chapter apply to siting of hazardous waste treatment and disposal facilities. The hazardous waste treatment or disposal facility shall satisfy all other applicable requirements of this article. The criteria for siting hazardous waste treatment and disposal facilities are divided into two phases as described in §§ 269a.12 and 269a.13 (relating to Phase I; and Phase II).

**§ 269a.12. Phase I.**

Phase I exclusionary criteria are established in §§ 269a.21—269a.29 (relating to Phase I exclusionary criteria) and prohibit the siting of a hazardous waste treatment or disposal facility in an excluded area delineated under these criteria. The Department will deny a permit application without further review if the Department determines the proposed facility is located in an excluded area. Phase I criteria apply to hazardous waste treatment or disposal facilities, except for the following:

- (1) A facility sited and substantially constructed in good faith prior to the effective date of this chapter.
- (2) Modifications to a facility within the existing facility site.

**§ 269a.13. Phase II.**

(a) Phase II criteria are established in §§ 269a.41—269a.50 (relating to Phase II criteria) and identify further environmental, social and economic factors which may affect the suitability of a location for a proposed facility. Phase II criteria apply to hazardous waste treatment or disposal facilities and modifications. If a facility site does not satisfy a Phase II criteria, the applicant shall submit additional information and analyses to allow the Department to assess what effect, if any, failure to satisfy the criterion has upon the acceptability of the facility site.

(b) The Department will provide notice to municipal officials and other interested persons in order to solicit further information regarding potential effects of a failure to meet Phase II criteria at the proposed facility site. The Department may undertake additional investigations and after consideration of relevant information, will determine whether the proposed design, construction and operation of the facility will successfully mitigate adverse effects which would otherwise be associated with failure to satisfy the criterion.

(c) After evaluating Phase II criterion individually, the Department will evaluate the facility's overall compliance with the Phase II criteria, and will identify risks that have not been eliminated through mitigation measures. If risks to the public health or safety, or to significant natural, scenic, historic or aesthetic values remain, which, in the judgment of the Department, render the proposed facility site unacceptable for a hazardous waste treatment or disposal facility, the Department may in-

clude conditions in the permit which eliminate or reduce the identified risks or may deny the permit application.

**§ 269a.14. Distances.**

The distances from a facility to a feature or structure described in these criteria shall be measured from the perimeter of the facility site.

**PHASE I EXCLUSIONARY CRITERIA**

**§ 269a.21. Water supply.**

(a) Landfill, land treatment and surface impoundment facilities may not be sited in the following locations:

(1) Within 1/2 mile of a well or spring used for a community water supply.

(2) Within 1/2 mile of either side of a stream or impoundment for a distance of 5 stream miles upstream of a surface water intake for a community water supply.

(3) Within 1/2 mile of an offsite private or noncommunity public well or spring used as an active water supply, unless prior to operation of the facility the applicant demonstrates the availability of an acceptable permanent alternative supply of like quantity, yield and quality to the existing supply, and provides financial assurance that the alternate supply will be made available at no additional cost to the water supply owner for a period of time that shall be no less than the bond liability period established in section 505(a) of the SWMA (35 P. S. § 6018.505(a)). If a permit is granted, it shall include a permit condition which requires installation of the alternative water supply prior to operation of the facility.

(b) A permanent alternative supply may be provided through the development of a new well with a distribution system, interconnection with a public water supply, extension of a private water supply or similar proposals, but it may not include provision of bottled water or a water tank supplied by a bulk water hauling system.

(1) The applicant shall demonstrate good faith efforts to reach agreement with the water supply owner regarding the provision of an acceptable permanent alternative water supply.

(2) If the applicant is unable, despite good faith efforts, to reach agreement with the water supply owner, the applicant shall demonstrate to the Department that an acceptable permanent alternative water supply is available, has been offered and will be provided to the water supply owner.

(3) The Department will determine that an alternative permanent water supply is acceptable if the quality and quantity satisfy requirements for public water supplies under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) and Chapter 109 (relating to safe drinking water). The Department may require the alternative water supply to provide higher quality, quantity or yield of water than that required to be delivered by public water systems if the water supply owner demonstrates that the higher quality, quantity or yield is necessary to continue a preexisting use of substantial economic value.

**§ 269a.22. Flood hazard areas.**

(a) Surface impoundment, landfill and land treatment facilities may not be sited in the 100-year floodplain or a larger area that the flood of record has inundated.

(b) Treatment and incineration facilities may not be sited in the 100-year floodplain or a larger area that the flood of record has inundated unless the industrial use on the proposed site was in existence as of October 4, 1978,

which is the effective date of the Flood Plain Management Act (32 P. S. §§ 679.101—679.601).

**§ 269a.23. Wetlands.**

Treatment and disposal facilities may not be sited in wetland areas.

**§ 269a.24. Oil and gas areas.**

Surface impoundments, landfill and land treatment facilities may not be sited over active or inactive oil and gas wells or gas storage areas located within or beneath the facility site. The term "active or inactive oil and gas wells or gas storage areas" has the same meaning as in the Oil and Gas Act (58 P. S. §§ 601.101—601.605).

**§ 269a.25. Carbonate bedrock areas.**

Surface impoundments, landfill and land treatment facilities may not be sited over limestone or carbonate formations, where the formations are greater than 5 feet in thickness and present at the topmost geologic unit. Areas mapped by the Pennsylvania Geologic Survey as underlain by formations shall be excluded unless competent geologic studies demonstrate the absence of formations under the facility site.

**§ 269a.26. National natural landmarks and historic places.**

Treatment and disposal facilities may not be sited within National Natural Landmarks designated by the National Park Service or historic sites listed on the National Register of Historic Places, unless the statute under which the designation or listing has been made authorizes the operation of the facilities in these areas.

**§ 269a.27. Dedicated lands in public trust.**

Treatment and disposal facilities may not be sited on lands in public trust, including State, county or municipal parks, units of the National Parks System, State forests, the Allegheny National Forest, State game lands, property owned by the Historical and Museum Commission, a National wildlife refuge, National fish hatchery or National environmental center unless the agency administering the lands has been given authority by statute or ordinance to allow the operation of the facilities on these lands.

**§ 269a.28. Agricultural areas.**

Treatment and disposal facilities may not be sited in agricultural areas established under the Agricultural Area Security Law (3 P. S. §§ 901—915) or in farmlands identified as Class I agricultural land by the Soil Conservation Service.

**§ 269a.29. Exceptional value waters.**

Treatment and disposal facilities may not be sited in watersheds of exceptional value waters.

**PHASE II CRITERIA**

**§ 269a.41. Water supply.**

(a) The applicant shall determine whether a proposed surface impoundment, landfill or land treatment facility is within the groundwater recharge area for public or private water supplies. The applicant shall delineate the position of the proposed facility site within relevant groundwater flow systems. The applicant shall identify all public and private water supplies and water treatment plants which may potentially be adversely affected by groundwater flow associated with the proposed hazardous waste facility, such as the water supplies located down-gradient in the flow path from the facility.

(b) For water supplies or water treatment plants which may be affected by the proposed facility, the applicant shall submit a detailed hydrogeologic study including information addressing the following:

(1) Hydraulic conductivity of the aquifer for the water supplies.

(2) Hydraulic conductivity of the geologic deposits underlying the proposed facility.

(3) Assessment of the influence of faults, fractures or other structural geologic features upon hydraulic conductivity and groundwater flow directions.

(4) Pumping rates of water supply wells and the areal extent and configuration of the cone of pumping depression associated with these wells in relation to the groundwater table of the surrounding areas.

(c) For water supplies or water treatment plants which the hydrogeologic study required in subsection (b) indicate, may be adversely affected by the proposed facility, the applicant shall demonstrate:

(1) The hydrogeologic characteristics of the proposed facility site and adjacent areas assure that implementation of a groundwater monitoring well program will provide protection of water supplies or water treatment plants from potential contamination.

(2) The feasibility of providing a permanent alternative water supply acceptable to the water supply owner of like quantity and quality to the existing supply at no additional cost to the owner.

#### § 269a.42. Geology.

(a) *Faults.* Landfill, land treatment and surface impoundment facilities are deemed to be acceptable if located 1 mile or more from a major structural feature. A major structural feature is a fault mapped by the Pennsylvania Geologic Survey or the United States Geological Survey at a scale of 4 miles to the inch. If the proposed facility is within 1 mile of a major structural feature, the applicant shall provide information and analysis to allow the Department to assess the compatibility of the proposed facility design with the faults in the area.

(b) *Bedrock depth.* For surface impoundment, landfill and land treatment facilities, a depth to bedrock of 15 feet or more shall be considered acceptable. Where the construction of the proposed facility required excavation, the final depth to bedrock shall be considered. The applicant shall address lesser bedrock depths by providing information and analysis to allow the Department to assess the compatibility of the design and construction of the proposed facility with the bedrock depth.

(c) *Slopes.* Slopes less than 15% for surface impoundment, landfill and land treatment facilities shall be considered acceptable. The applicant shall address greater slopes by submitting information and analysis to allow the Department to assess the compatibility of the design and construction measures for the proposed facility that would minimize adverse effects.

(d) *Landslide prone areas.* If a facility site is in a landslide prone area or is adjacent to a landslide prone area, the applicant shall submit information and analyses to allow the Department to assess whether the design measures provide adequate protection from potential landslides.

(e) *Oil and gas wells.* Surface impoundment, landfill and land treatment facilities shall be considered acceptable if the applicant can establish that abandoned oil and gas wells and gas storage areas do not exist within the

proposed facility site. The term "abandoned oil and gas wells and gas storage areas" has the same meaning as in the Oil and Gas Act (58 P. S. §§ 601.101—601.605). If abandoned facilities exist, the applicant shall provide information and analysis to allow the Department to assess the probability and degree of subsurface discharges to be expected from the existence of abandoned oil and gas wells and gas storage areas within the facility site after wells are plugged.

(f) *Carbonate areas.* Where surface impoundment, landfill or land treatment and disposal facilities are proposed over areas underlain by carbonate bedrock, the applicant shall provide information and analysis to allow the Department to assess the prevalence of solution channels and the potential for sinkholes at the facility site.

(g) *Hydrogeology.* A surface impoundment, landfill or land treatment facility may not be located in an area underlain by coarse unconsolidated deposits, such as well sorted valley fill deposits and heavily fractured bedrock. If any other facility is to be located in an area underlain by coarse unconsolidated deposits the applicant shall provide information and analyses to allow the Department to further assess the facility site to determine the environmental impact of these subsurface conditions.

(h) *Seismic risk zones.* If a proposed treatment or disposal facility is within a 5-mile radius of earthquake epicenters as mapped by the Pennsylvania Geologic Survey or the United States Geological Survey, the applicant shall specify design measures necessary to withstand potential seismic events, and the Department will determine whether the proposed design measures provide adequate protection from potential earthquake damage.

#### § 269a.43. Soils.

(a) *pH.* Land farming facilities located so the soil pH within the proposed facility is 6.0 or greater shall be deemed to be acceptable. If the proposed facility cannot meet the soil pH requirements of this subsection, the applicant shall provide information and analysis to allow the Department to assess the ability of the proposed facility to mitigate adverse environmental effects resulting from incompatible soil pH.

(b) *Cation exchange capacity.* Surface impoundment, landfill and land treatment facilities located so that the capacity of the soil to exchange cations expressed as a sum for all exchangeable cations is 15 milliequivalents per 100 grams of soil or greater shall be deemed to be acceptable. If the cation exchange capacity is less than 15, the applicant shall provide information and analyses to allow the Department to assess the soil cation exchange capacity in relation to the potential for migration of contaminants from the proposed facility.

#### § 269a.44. Mineral bearing areas.

(a) *Ownership of mineral rights.*

(1) Surface impoundment, landfill and land treatment facilities shall be deemed to be acceptable if the applicant owns the mineral rights within the proposed facility and the area has not been previously mined.

(2) If the applicant does not own all the mineral rights within the proposed facility, the applicant shall determine the ownership of mineral rights conveyed with the property deed to the proposed facility. The applicant shall provide a certification based on a property title search, that ownership of all mineral rights, including coal, oil and gas is or will be held by the applicant and that these rights will not be severed from the property as long as hazardous waste remains on the property.

(b) *Surface subsidence risk.* If any part of a proposed facility site has been previously mined by deep or surface mining methods, the applicant shall provide the results of an engineering study of the proposed site by a competent geotechnical engineer. The study shall allow the Department to assess the probability and degree of surface subsidence and the methods which have been used or are proposed to stabilize the surface. Additionally, the applicant shall provide assurance that minerals providing support will not be mined as long as hazardous waste remains onsite.

**§ 269a.45. Land use.**

(a) *New facilities.* Treatment and disposal facilities located on lands either designated for industrial use by existing municipal zoning or indicated as industrial in officially adopted county or municipal comprehensive plans or land use maps are deemed to be acceptable. If this standard cannot be met, the applicant shall provide information and analysis to allow the Department to assess the compatibility of the design of the proposed facility with zoning or land use controls. Where no zoning exists, the applicant shall provide information and analysis to allow the Department to assess compatibility with existing land use.

(b) *Existing facilities.* Treatment and disposal facilities located on sites where solid waste or hazardous waste operations—treatment, storage, recovery and disposal—or both, are currently being conducted under authority of the act are deemed to comply with the land use criterion.

**§ 269a.46. Transportation standards.**

(a) *Access.* Treatment and disposal facilities within 5 miles travel distance of interstate or limited access highways and served by roads capable of handling anticipated truck traffic or served by a dedicated limit access highway shall be deemed to be acceptable. If this standard cannot be met, the applicant shall provide information and analysis to allow the Department to assess the proximity of the proposed facility to interstate highways, the effect upon the operation of the proposed facility and the effect of the proposed facility upon the community in the transportation corridor to and from the facility. The applicant shall provide a plan for highway improvements, if necessary.

(b) *Structures along transportation corridor.* Treatment and disposal facility sites where the transportation corridor between the entrance to a facility and the nearest interstate or limited access highway is the primary access for less than five residential dwellings per road mile with no schools, community parks or hospitals, are deemed to be acceptable. If these criteria are not met, the applicant shall provide information and analysis to allow the Department to assess the effect the proposed facility will have upon safety and traffic congestion.

(c) *Transportation restrictions.* Treatment and disposal facility sites are deemed to be acceptable if there are less than four intersections per mile between the entrance to the facility and the nearest interstate or limited access highway. If there are four or more intersections per mile, the applicant shall provide information and analysis to allow the Department to assess the effect the proposed facility will have upon safety and traffic congestion.

**§ 269a.47. Safety services.**

Treatment and disposal facilities are deemed to be acceptable if located within an area with adequate safety services. The applicant shall provide information and analyses to allow the Department to assess the adequacy

of fire protection, police, ambulance and other necessary safety services available and willing to provide services to the proposed facility. In all cases, the applicant shall also comply with 40 CFR Part 264, Subparts C and D (relating to preparedness and prevention; contingency plan and emergency procedures) and Chapter 264a, Subchapter D (relating to contingency plan and emergency procedures).

**§ 269a.48. Proximity of facilities and structures.**

Treatment and disposal facility sites are deemed to be acceptable if the distance from the facility to an airport, school, community park, hospital, church, retail center or nursing home, is greater than 1 mile. If this criterion cannot be met, the applicant shall provide information and analyses to allow the Department to assess the effect the proposed facility will have on the use of these facilities.

**§ 269a.49. Economic criteria.**

(a) A treatment or disposal facility which does not adversely affect the economy of the host and contiguous municipalities and municipalities contiguous to the transportation corridor to the nearest interstate or limited access highway is deemed to be acceptable without further assessment. If the facility will result in a net loss of revenues to local jurisdictions, the applicant shall provide information and analysis to allow the Department to assess compensation needed to offset actual net loss of revenues to local jurisdictions caused by the proposed facility.

(b) If a treatment or disposal facility will result in a net increase in the cost of services provided by local government, the applicant shall provide information and analyses to allow the Department to assess compensation needed to offset net increases in cost of services.

(c) If a treatment or disposal facility will adversely affect the local economy, the applicant shall provide information and analyses to allow the Department to assess employment and future economic development generated as a result of the location of the facility which may offset a decrease in the local economy.

(d) If a treatment or disposal facility will result in a net increase in cost for monitoring the facility by local government, the applicant shall provide information and analyses to allow the Department to assess the need for compensation for technical assistance which may offset these costs. The applicant shall assess provisions for site access by local government.

(e) The applicant shall provide information and analyses to allow the Department to assess a change in market value of property within the local government caused by operation of the treatment or disposal facility and means by which operation of the proposed facility may offset the change.

**§ 269a.50. Environmental assessment considerations.**

(a) The purpose of the criteria in this section is to assist the Department in evaluating the potential impact of a proposed treatment or disposal facility on natural, scenic, historic and aesthetic values of the environment under PA. CONST. ART. I, § 27. The Department will determine whether significant environmental harm will occur after reviewing the applicant's environmental assessment report submitted in compliance with this chapter and after consulting with the applicant and relevant governmental agencies.



(b) If the Department determines that there is a significant impact on natural, scenic, historic or aesthetic values of the environment, the Department will consult with the applicant to examine ways to reduce the environmental incursion to a minimum. If, after consideration of mitigation measures, the Department finds that significant environmental harm will occur, the Department will evaluate the social and economic benefits of the proposed facility to determine whether the harm outweighs the benefits. The evaluation of environmental harm shall include, at a minimum, a consideration of the impact of the proposed facility on the 15 types of environmental resources described in this subsection. There may be additional potentially affected natural, scenic, historic or aesthetic values which the Department is constitutionally obligated to protect that will be considered for proposed facilities in some locations. In those instances, the Department will identify additional potential impacts for the applicant. The following criteria may not be construed as an attempt to limit or restrict the responsibilities of a Commonwealth agency under PA. CONST. ART. I, § 27.

(1) If the proposed facility is located within 1 mile of the corridor of a stream or river designated as a National or State wild, scenic, recreational, pastoral or modified recreation river under the National Wild and Scenic Rivers Act of 1968 (16 U.S.C.A. §§ 1271—1287), or the Pennsylvania Scenic Rivers Act (32 P.S. §§ 820.21—820.29) the applicant shall provide information and analyses to allow the Department to determine whether the proposed facility conforms to the designating statutes, land management guidelines and studies or plans for the corridor.

(2) If the proposed facility is located within 1 mile of the nearest bank of a stream or river listed as a 1-A priority for study by the Department as a State wild, scenic, recreational, pastoral or modified recreational river; or mandated by the United States Congress for study or determined by the United States Park Service to meet the criteria for study for potential inclusion into the National Wild and Scenic Rivers System, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the river or stream.

(3) If the proposed facility is located within 1 mile of a unit of the National Parks System; a State, county or municipal park; a recreational facility operated by the United States Army Corps of Engineers; a State forest picnic area; or the Allegheny River Reservoir in the Allegheny National Forest; the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the park or other recreation areas listed in this subsection.

(4) If the facility is located within 1 mile of the footpath of the Appalachian Trail or other State designated trail, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the Appalachian Trail or other State designated trail.

(5) If the facility is located within 1 mile of a National Natural Landmark designated by the United States National Park Service; or a natural area or wild area designated by the EQB, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may

create adverse environmental, visual or traffic impacts on the National Landmark, natural area or wild area.

(6) If the facility is located within 1 mile of or within an identified potential impact area of a National wildlife refuge, National fish hatchery or National environment center operated by the United States Fish and Wildlife Service, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the wildlife reserve, fish hatchery or environmental center.

(7) If the facility is located within 1 mile of a historic property owned by the Historical and Museum Commission, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse environmental, visual or traffic impacts on the historic property.

(8) If the facility is located within 1 mile of a historic site listed in the National Register of Historic Places, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on historic sites.

(9) If the facility is located within 1/4 mile of a historic site listed in the Pennsylvania Inventory of Historic Places or an archaeological site listed in the Pennsylvania Archaeological Site Survey, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on the historical or archaeological site.

(10) If the facility is located within 1 mile of the boundary of a State forest or State game land or the proclamation boundary of the Allegheny National Forest, the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse impacts on the forest, game and or resources.

(11) If the facility is located within an area which is a habitat of a rare, threatened or endangered species of plant or animal protected by the Endangered Species Act of 1973 (7 U.S.C.A. § 136 and 16 U.S.C.A. §§ 460r-1, 460l-9, 668 dd, 715i, 715s, 1362, 1371, 1372, 1402 and 1531—1543), the Wild Resource Conservation Act (32 P.S. §§ 5301—5314), or recognized by the Fish and Boat Commission or Game Commission; the applicant shall provide information and analyses to allow the Department to assess the extent to which the proposed facility may create adverse effects on the species or habitate and mitigation measures the applicant has proposed to deal with adverse impacts.

(12) If the facility will result in an increase in the peak discharge rate of stormwater drainage from the project site, the applicant shall demonstrate that the proposed facility is in conformance with the official stormwater management plan required by the Storm Water Management Act (32 P.S. §§ 680.1—680.17), and the proposed facility will manage the runoff in a manner that otherwise adequately protects health and property from injury.

(13) If a facility is proposed to be located in a watershed for which a formal written request for designation as exceptional value waters has been received by the Department or the EQB, the applicant shall provide information and analyses to allow the Department to assess the impact of the proposed facility on the pending designation.

(14) If the facility generates a wastewater discharge which could degrade waters designated as high quality waters under Chapter 93 (relating to water quality standards) or waters for which a formal written request for designation as high quality waters has been received by the Department or the EQB, the applicant shall demonstrate:

(i) The discharges are justified as a result of necessary economic or social development which is of significant public value.

(ii) The discharges, alone or in combination with other anticipated discharges of pollutants to the waters, will not preclude a use presently possible in the waters and downstream from the waters, and will not result in a violation of the numerical water quality criteria specified in § 93.9 (relating to designated water uses and water quality criteria) which are applicable to the receiving waters.

(15) If a proposed facility is to be located on prime or unique agricultural land as defined by the Soil Conservation Service, lands currently in agricultural use, or lands of Statewide importance as designated by the Soil Conservation Service, the applicant shall provide information and analyses to allow the Department to assess the proposed facility's consistency with Commonwealth policy, such as Executive Order 1982-3 regarding agricultural lands at 4 Pa. Code Chapter 7, Subchapter W (relating to agricultural land preservation policy).

### **Subchapter B. CERTIFICATES OF PUBLIC NECESSITY**

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#### **GENERAL PROVISIONS**

##### **§ 269a.101. Definitions.**

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

*CPN*—Certificate of public necessity.

*Chairperson*—Chairperson of the EQB.

*Impact assessment*—A report, analysis or module previously prepared by or on behalf of the applicant to comply with existing Federal or State permitting or regulatory requirements. The term includes solid waste management permit modules and analyses submitted to meet the requirements of Subchapter A (relating to siting hazardous waste treatment and disposal facilities) and established State and Federal permitting requirements.

(b) Words and terms not otherwise defined in this section have the meanings in §§ 260a.10 and 269a.1 (relating to definitions; and definitions).

##### **§ 269a.102. Scope and applicability.**

This subchapter establishes application requirements and procedures governing the review and consideration of an application for a CPN from the EQB under section 105 of the act (35 P. S. § 6018.105). A permittee of a hazardous waste treatment or disposal facility may apply for a CPN under this subchapter.

##### **§ 269a.103. CPN.**

(a) The EQB has the power and its duty is to assist in the implementation of the Pennsylvania Hazardous Waste Facilities Plan through the issuance of CPNs for the establishment of hazardous waste treatment and disposal facilities.

(b) Issuance of a CPN by the EQB shall suspend and supersede local laws, including zoning ordinances, which would preclude or prohibit the establishment of a hazardous waste treatment or disposal facility.

(c) The suspension and supersession granted by the CPN is explicitly extended to a person to whom the CPNs are issued for the purpose of hazardous waste treatment or disposal, and to the successors and assigns of the person.

#### **CONFLICT OF INTEREST**

##### **§ 269a.111. Conflict of interest.**

A member or alternate of the EQB or staff designated to review any aspect of an application for a CPN who may have a potential conflict of interest as described in the act of October 4, 1978 (P. L. 883, No. 170) (65 P. S. §§ 401—413), the State Adverse Interest Act (71 P. S. §§ 776.1—776.7a) and 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees) or other applicable codes of conduct shall immediately notify the Chairperson of the potential conflict. The Chairperson will advise the EQB of the potential conflict. The EQB may recommend that the member, alternate or staff abstain from participation in the proceedings or may seek a ruling regarding the conflict under the applicable ethics law or code of conduct.

#### **APPLICATION REQUIREMENTS**

##### **§ 269a.121. Eligible applicants.**

An applicant for a CPN shall have:

(1) Permits necessary for construction and operation of a new or modified facility from the Department or the Federal agency authorized to issue permits in this Commonwealth.

(2) Implemented impact assessments and public participation programs related to obtaining those permits.

##### **§ 269a.122. Application.**

The applicant shall submit eight copies of the following items in an application for a CPN to the Chairperson by certified mail:

(1) The hazardous waste permit issued for the treatment or disposal facility by the Department or the Federal agency, or both, authorized to issue permits in this Commonwealth.

(2) Documentation of the applicant's receipt of other State and Federal permits necessary for construction and operation of the facility.

(3) Impact assessments related to the facility.

(4) Local laws and ordinances, if any, which the applicant believes may preclude or prohibit the establishment of a hazardous waste treatment or disposal facility on the proposed site.

(5) A narrative description, including supporting documentation and appropriate references, demonstrating the extent to which the applicant has complied with §§ 269a.151—269a.155 (relating to criteria for issuing CPNs).

(6) Other information the applicant feels will help the EQB determine if a CPN is warranted based upon the criteria in §§ 269a.151—269a.155.

(7) A summary of the application which describes the type of facility for which this CPN is requested and includes a summary of paragraphs (1)—(6). The summary shall be five pages or less in length.

**§ 269a.123. Application fee.**

(a) An application shall be accompanied by a one-time minimum nonrefundable application fee of \$1,500.

(b) The applicant shall reimburse the Board for actual expenses incurred for reviewing and acting on the application beyond the expenses covered by the minimum fee.

(c) An applicant resubmitting a CPN application for the same facility is exempt from the minimum fee but is responsible for the expenses incurred by the Board for reviewing and acting upon the application.

**§ 269a.124. Public notice of application submitted to the EQB.**

(a) The applicant shall provide written notice by certified mail of its submission of an application for a CPN to the EQB within 10 days of the submittal to:

- (1) The host municipality and host county.
- (2) Other counties within 10 miles and other municipalities within 1 mile of the proposed facility.
- (3) The landowners adjacent to the proposed site.

(b) The applicant shall publish a notice of the submission of the CPN application in a display advertisement in two newspapers of general circulation in the county of the proposed site once a week for 2 successive weeks and send proof of publication of this notice to the EQB.

(c) The notices required by this section shall also include the name, address and telephone number of the applicant, including the name and location—municipality and county—of the facility, a brief description of the business conducted or activity described in the application, and a contact person in the applicant's office from whom interested citizens may obtain further information.

(d) Acceptable proof of notice required by this section will include certified mail receipts and proof of publication from newspaper publishers.

**EQB PROCEDURE**

**§ 269a.131. Complete application.**

(a) Upon receipt of an application for a CPN by the Board, the application shall be reviewed for completeness.

(b) The Chairperson will notify the EQB that an application has been received at the first EQB meeting following its receipt. The EQB will determine whether an application for a CPN is complete within 60 days of the Chairperson's notification to the EQB.

(c) Upon a determination by the EQB that the application is complete, the Chairperson will initiate the public review and comment procedures outlined in §§ 269a.132 and 269a.141 (relating to local government representatives; and initial public notice) and notify the applicant. The Chairperson will provide a copy of the complete application to the host county and host municipality.

(d) An application determined to be incomplete shall be returned to the applicant with an explanation of why the application is incomplete.

(e) After the application is determined to be complete, the EQB reserves the right to request additional information relevant to its decision under section 105(f) and (g) of the act (35 P. S. § 6018.105(f) and (g)).

**§ 269a.132. Local government representatives.**

(a) When the EQB has accepted a complete CPN application for consideration, the EQB will ask the governing body of the host county and the governing body of the host municipality—township, borough, town, home rule municipality or city—to each name one representative who will be invited to be present during EQB deliberations and hearings on the application and receive copies of materials given EQB members during the consideration of an application accepted for review.

(b) The role of the local government representative shall be to participate in the deliberations of the EQB as it considers the application. The representatives will not have voting rights on the EQB.

(c) A local government representative will be reimbursed for expenses incurred in participating with the EQB as outlined in Management Directive 230.10 (Travel and Subsistence Allowances), issued by the Governor's Office through the Directives Management System. See 4 Pa. Code Chapter 1, Subchapter A (relating to directives management system). This cost will be recovered as part of the cost of review of the application in the application fee under § 269a.123 (relating to application fee).

**PUBLIC REVIEW AND COMMENT**

**§ 269a.141. Initial public notice.**

The EQB will issue a press release and publish a notice in the *Pennsylvania Bulletin* and two newspapers of general circulation in the county of the proposed facility once a week for 2 successive weeks. The notices and press release shall state that the EQB is considering a complete application for a CPN, and shall include the following items:

- (1) The name, address and telephone number of the applicant.
- (2) The location and description of the proposed facility.
- (3) A description of the process followed by the EQB to consider an application for a CPN.

(4) The location of a local docket where application materials can be reviewed by interested persons in the host municipality or county.

(5) An invitation to interested persons to include their name on a mailing list established by the EQB to receive future notices concerning the CPN application.

**§ 269a.142. Local docket and mailing list.**

(a) The EQB will establish a docket in a publicly accessible location in the host municipality or county as near as practical to the proposed facility where materials related to the EQB's consideration of the CPN application can be made available to the public for review.

(b) The EQB will establish and maintain a mailing list of persons interested in receiving notices concerning the CPN application.

(c) If the docket is located in a publicly-owned or operated building, the EQB will compensate the building owner or operator for the cost of maintaining the docket for public review. This cost will be recovered as part of the cost of review of the application in the application fee under § 269a.123 (relating to application fee).

**§ 269a.143. Public hearing.**

(a) The EQB will schedule at least one public hearing on the application in the host municipality or county within 90 days of the acceptance of a complete application for consideration.

(b) Notice of the hearing will be given 30 days before the hearing by the EQB as outlined in § 269a.141 (relating to initial public notice) and to those on the mailing list in § 269a.142 (relating to local docket and mailing list).

(c) A minimum of three members of the EQB will be present at a hearing scheduled on the application. The hearing shall be transcribed and the transcript shall be available to the EQB for review.

(d) The public comment period will remain open for comments for at least 30 days after the last public hearing on the application.

(e) The public comment period may be extended up to 60 days by the EQB if significant new information is forthcoming that warrants the extension.

**CRITERIA FOR ISSUING CPNs****§ 269a.151. General criterion.**

The EQB will evaluate the information received from the applicant, the comments received on the application during the comment period and other relevant information in reaching its decision on the application.

**§ 269a.152. Conformance with the Hazardous Waste Facilities Plan.**

(a) The EQB will determine the extent to which the facility is in conformance with the Hazardous Waste Facilities Plan (Plan) as adopted and amended by the EQB.

(b) The EQB will determine whether the facility is needed as defined by the Plan and whether the facility is consistent with the waste management hierarchy outlined in the Plan.

**§ 269a.153. Impact on adjacent populated areas.**

(a) The EQB will determine the impact of the proposed facility on adjacent populated areas and areas through which wastes are transported to the facility.

(b) In making this determination the EQB may consider how the facility has complied with siting criteria under §§ 269a.46 and 269a.48 (relating to transportation standards; and proximity of facilities and structures).

**§ 269a.154. Local health, safety, economic impact and planning.**

(a) The EQB will determine the impact of the facility on the borough, township, town, home rule municipality

or city in which the facility is located in terms of health, safety, cost and consistency with local planning.

(b) In making this determination the EQB may consider how the facility has complied with siting criteria in §§ 269a.45, 269a.47 and 269a.49 (relating to land use; safety services; and economic criteria).

**§ 269a.155. Public participation.**

(a) The EQB will consider the extent to which the applicant has implemented guidelines developed by the EQB at Chapter 24 (relating to model procedure for meaningful public participation—statement of policy) relating to public participation in the location of a hazardous waste treatment and disposal facility as significant evidence of the applicant's willingness to provide the public with a meaningful opportunity to participate in the evaluation of alternate sites or technologies, development of siting criteria, socioeconomic assessment and other phases of the site selection process.

(b) The EQB will also consider cooperative agreements developed between the applicant and host county and host municipality as further evidence of meaningful public participation.

(c) The EQB will determine the extent to which the proposed facility has been the subject of a public participation program in which citizens have had a meaningful opportunity to participate in the evaluation of alternative sites or technologies, development of siting criteria, socioeconomic assessment and other phases of the site selection process.

**EQB DECISION****§ 269a.161. Deadline for decision.**

(a) The EQB will issue its decision on the application within 180 calendar days of its determination that the application is complete.

(b) The EQB may consider extending the deadline for decision if one of the following occurs:

(1) The applicant and host county and host municipality make a written recommendation to the Board for an extension because they are close to agreement on cooperative agreements that would resolve key issues.

(2) The EQB extends the public comment period under § 269a.143 (relating to public hearing).

(c) The extension will be for 60 days or less.

(d) The EQB will have 60 days after an extension to issue its decision.

**§ 269a.162. Record of decision.**

(a) A written record of decision outlining the findings of the EQB under each of the criteria established in §§ 269a.151—269a.155 (relating to criteria for issuing CPNs) will be issued by the EQB.

(b) The record of decision will include a summary of comments received by the EQB on the CPN application and a response indicating how the comments were considered by the EQB.

**§ 269a.163. Public notice of decision.**

(a) The Chairperson will notify the applicant in writing of the EQB decision on the application for a CPN within 10 days.

(b) The Chairperson will also notify in writing the host municipality, the host county and persons identified on

the mailing list established under § 269a.142 (relating to local docket and mailing list) of the EQB decision within 10 days.

(c) The Department will provide additional notice of the decision of the EQB as described in § 269a.141 (relating to initial public notice).

**Subchapter C. HOST MUNICIPALITY FUND ALLOCATION**

**ELIGIBILITY**

Sec.  
269a.201. Eligibility.

**COMPLIANCE**

269a.211. Compliance with the Pennsylvania Hazardous Waste Facilities Plan.

**ALLOCATION**

269a.221. Allocation of the Fund.

**DISTRIBUTION**

269a.231. Distribution of payments.

**ELIGIBILITY**

**§ 269a.201. Eligibility.**

A host municipality is eligible for a one time distribution from the Fund, under section 305 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.305), for each qualifying facility, located in whole or in part, within its corporate boundary.

**COMPLIANCE**

**§ 269a.211. Compliance with the Pennsylvania Hazardous Waste Facilities Plan.**

A host municipality will only receive a one time payment under § 269a.201 (relating to eligibility) for a commercial hazardous waste treatment or disposal facility, or portion thereof, that is identified as being needed by the Pennsylvania Hazardous Waste Facilities Plan.

**ALLOCATION**

**§ 269a.221. Allocation of the Fund.**

(a) The Department will identify qualifying facilities at the end of each calendar year. A municipality will become eligible for payment in the first calendar year that a qualifying facility is permitted and operating. Host municipalities are not required to submit an application or request to be eligible.

(b) A host municipality shall be eligible for a one time payment from the Fund if a qualifying facility is identified by the Department in whole, or in part, within the host municipality's corporate boundaries, and moneys remain in the Fund after requests for reimbursement under section 305(d)(1) of the act (35 P. S. § 6020.305) have been satisfied for the calendar year.

(c) When only one qualifying facility is identified, the host municipality shall receive the balance of the fund for that year, subject to subsection (b).

(d) When more than one qualifying facility is identified, the Department will allocate the available moneys using the following formula and method of calculation:

(1) The Hazardous Waste Site Ranking System established by the EPA, under Appendix A of 40 CFR 300 (relating to uncontrolled hazardous waste site ranking system; a users manual) will be used to assign a numerical value to each qualifying facility ranging from 1 to 100, considering:

(i) The toxicity, mobility and other characteristics of the hazardous waste.

(ii) The proximity of the facility to persons or natural resources which would be endangered by the escape of the hazardous waste from the facility.

(2) For scoring purposes, an assigned value of 1 will be used for the observed release and containment factors in the hazard ranking system calculation.

(3) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, planned for treatment or disposal annually at the facility shall be calculated as a percentage of the total amount of hazardous waste treated or disposed of annually within this Commonwealth.

(4) The total weight or volume of hazardous waste, whichever the Department determines is most readily calculated and most appropriate, generated in this Commonwealth will be calculated as a percentage of the hazardous waste treated or disposed of annually at the facility. The Department may require executed contracts or the facility's first year of manifest data from the owner or operator to determine this figure.

(5) If the total facility is not designated as needed by the Pennsylvania Hazardous Waste Facilities Plan, the percentage of the facility meeting the needs of the Pennsylvania Hazardous Waste Facilities Plan will be estimated by the Department.

(6) The numerical values derived in paragraphs (1)—(5) will be multiplied together to obtain a rating score for the qualifying facility.

(7) The rating scores will then be compared and a pro rata share of the available Fund monies will be allocated to the host municipality based on these scores.

(8) If a qualifying facility is located in more than one host municipality, the allocation for that facility shall be distributed among the municipalities based on the percentage of the permitted facility within each municipality.

**DISTRIBUTION**

**§ 269a.231. Distribution of payments.**

The Department may require up to 1 year's operating data from a qualifying facility to determine the allocation for that facility. Allocation payments from the Fund will not be disbursed until the eligible reimbursements under section 305(d)(1) of the Hazardous Sites Cleanup Act (35 P. S. § 6020.305(d)(1)) have been made or funds encumbered for payment, and the Department has sufficient data to make the determinations required by § 269a.221 (relating to allocation of the Fund). The Department will make the determinations and either disburse or encumber the remaining moneys in accordance with current fiscal policy to assure payment within 1 year of determination of eligibility of the host municipality.

**CHAPTER 270. (Reserved)**

**§§ 270.1—270.4. (Reserved).**

**§§ 270.11—270.13. (Reserved).**

**§ 270.21. (Reserved).**

**§ 270.22. (Reserved).**

**§§ 270.31—270.33. (Reserved).**

**§§ 270.41—270.43. (Reserved).**

**§ 270.60. (Reserved).**

## CHAPTER 270a. HAZARDOUS WASTE PERMIT PROGRAM

### Subchap.

- A. GENERAL INFORMATION
- B. PERMIT APPLICATION
- D. CHANGES TO PERMITS
- E. EXPIRATION AND CONTINUATION OF PERMITS
- F. SPECIAL FORMS OF PERMITS
- G. INTERIM STATUS
- H. PUBLIC NOTICE AND HEARINGS

### Subchapter A. GENERAL INFORMATION

#### Sec.

- 270a.1. Incorporation by reference, scope and applicability.
- 270a.2. Definitions.
- 270a.3. Payment of fees.
- 270a.4. Effect of permit.
- 270a.5. Noncomplying and program reporting by Director.
- 270a.6. References.

#### § 270a.1. Incorporation by reference, scope and applicability.

(a) Except as expressly provided in this chapter, 40 CFR Part 270 (relating to EPA administered permit programs: the hazardous waste permit program) and its appendices (relating to hazardous waste permit program) are incorporated by reference.

(b) Regarding the requirements incorporated by reference, the requirements of this chapter do not apply to an owner or operator of a facility specifically exempted under 40 CFR 270.1(c)(2) (relating to purpose and scope of these regulations) unless the facility is regulated under § 270a.60(b) (relating to permits by rule).

(c) The owner or operator of a facility eligible to operate under § 270a.60(b) (relating to permits by rule) is deemed to have a hazardous waste management permit if the applicable requirements of § 270a.60(b) are satisfied.

#### § 270a.2. Definitions.

(a) The definitions for "disposal," "person" and "storage" are not incorporated by reference.

(b) The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) does not apply for the terms "Administrator," "Director," "Environmental Protection Agency" and "Regional Administrator" found in 40 CFR 270.2 (relating to definitions).

#### § 270a.3. Payment of fees.

40 CFR 270.3 is not incorporated by reference and the following fees are established:

(1) Applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

- (i) Land disposal facilities—commercial—\$125,000.
- (ii) Land disposal facility—captive—\$71,400.
- (iii) Surface impoundments:
  - (A) Commercial—\$36,000.
  - (B) Captive—\$14,000.
- (iv) Postclosure permits—\$25,000.
- (v) Treatment facilities:
  - (A) Commercial—\$36,000.
  - (B) Captive—\$14,000.
- (vi) Storage facilities:
  - (A) Commercial—\$36,000.
  - (B) Captive—\$14,000.

(vii) Incinerators:

- (A) Commercial—\$93,000.
- (B) Captive—\$54,000.

(2) If more than one permitted activity is located at a site, or more than one activity occurs, the fees are cumulative.

(3) Module I applications and permit modification applications for a permit for hazardous waste storage, treatment and disposal facilities shall be accompanied by a nonrefundable permit application fee in the form of a check payable to the "Commonwealth of Pennsylvania" according to the following schedule:

(i) Module I and Generic Module I applications:

- (A) Module I—\$300.
- (B) Generic Module I—\$1,500.

(ii) Class 2 and Class 3 permit modifications—50% of fees listed in subsection (1).

(iii) Class 1 permit modifications—\$700.

#### § 270a.4. Effect of permit.

Regarding the requirements incorporated by reference, nothing in 40 CFR 270.4 (relating to effect of a permit) prohibits the Department from taking an enforcement action under section 602 of act (35 P. S. § 6018.602).

#### § 270a.5. Noncomplying and program reporting by Director.

The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) do not apply to 40 CFR 270.5 (relating to noncompliance and program reporting by the Director).

#### § 270a.6. References.

Regarding the requirements incorporated by reference, the term "*Federal Register*" retains its meaning and is not replaced by the term "*Pennsylvania Bulletin*" when used in 40 CFR 270a.6 (relating to references).

### Subchapter B. PERMIT APPLICATION

#### Sec.

- 270a.10. General application requirements.
- 270a.12. Confidentiality of information.
- 270a.13. Contents of Part A of the permit application.
- 270a.14. Additional applicant requirements.
- 270a.29. Permit denial.

#### § 270a.10. General application requirements and permit issuance procedures.

(a) Regarding the requirements incorporated by reference:

(1) The substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the terms "Administrator," "*Federal Register*" and "EPA" does not apply to 40 CFR 270.10(e)(2) (relating to general application requirements).

(2) In 40 CFR 270.10(e)(3), the term "Department" is substituted for "administrator" and "sections 602 and 610 of the act" are substituted for "section 3008 of RCRA."

(3) The substitution of terms in § 260a.3 for the term "Administrator" does not apply to 40 CFR 270.10(f)(3).

(4) An application submitted under 40 CFR 270.10(f)(2) and (g)(1)(i) shall be submitted to the Department and not to the EPA.

(b) In addition to the requirements incorporated by reference, an application shall include the application fees required by § 270a.3 (relating to payment of fees).

(c) The following procedures are used in issuing a permit:

(1) A person who requires a permit under the hazardous waste program shall complete, sign and submit to the Department an application for a hazardous waste permit.

(2) The Department will not begin the processing of a permit until the applicant complies with the application requirements for that permit and the signature and certification requirements of 40 CFR 270.11 (relating to signatories to permit applications and reports).

(3) The Department reviews for completeness every hazardous waste permit application for a new or existing hazardous waste management facility. Upon completing the review, the Department notifies the applicant in writing whether the application is complete. If the application is incomplete, the Department lists the information necessary to make the application complete. When the application is for an existing hazardous waste management facility, the Department specifies in the notice of deficiency a date for submitting the necessary information. If the applicant thereafter submits a complete application, the Department notifies the applicant that the application is complete. After the application is completed, the Department may request additional information from an applicant if necessary to clarify, modify or supplement previously submitted material. Requests for additional information do not render an application incomplete.

(4) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions taken under applicable statutory provisions.

(5) If the Department decides that a site visit is necessary in conjunction with the processing of an application, it will notify the applicant. The applicant shall provide the Department access for a site visit at a reasonable time.

(6) The effective date of an application is the date on which the Department notifies the applicant that the application is complete as provided in paragraph (3).

(7) Once an application is complete, the Department tentatively decides whether to prepare a draft permit or to deny the application.

(8) If the Department tentatively decides to deny the permit application, it will issue a notice of intent to deny the application. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as a draft permit prepared under this section. If, after issuing a notice of intent to deny, the Department's final decision is to issue the permit, the notice of intent to deny is withdrawn and the Department will proceed to prepare a draft permit under paragraph (9).

(9) A draft permit prepared by the Department contains the following information:

(i) Conditions under this chapter and 40 CFR 270.30 and 270.32 (relating to conditions applicable to all permits; and establishing permit conditions).

(ii) Proposed compliance schedules under 40 CFR 270.33 (relating to schedules of compliance).

(iii) Monitoring requirements under Chapters 264a and 265a; 40 CFR Parts 264 and 265 and 40 CFR 270.31.

(10) A draft permit prepared under this section shall be accompanied by a statement of basis, under paragraph (11) or a fact sheet under paragraph (12), publicly noticed

under § 270a.80 (relating to public notice and comment requirements) and made available for a public comment under § 270a.81(2) (relating to public hearings). The Department gives notice of the opportunity for public hearing under § 270a.81(2) and responds to comments under paragraph (13).

(11) The Department prepares a statement of basis for every draft permit for which a fact sheet under paragraph (12) is not prepared. The statement of basis describes the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or revoke, reasons supporting the tentative decision. The statement of basis is sent to the applicant and, on request, to other persons.

(12) Preparation of fact sheets complies with the following:

(i) A fact sheet is prepared by the Department for every draft permit for a major hazardous waste management facility or activity, and for every draft permit which the Department determines is the subject of widespread public interest or raises major issues. The fact sheet briefly sets forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department sends this fact sheet to the applicant and, on request, to other persons.

(ii) The fact sheet includes the following, when applicable:

(A) A brief description of the type of facility or activity which is the subject of the draft permit.

(B) The type and quantity of wastes proposed to be or being treated, stored or disposed.

(C) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions.

(D) Reasons why requested variances or alternatives to required standards do or do not appear justified.

(E) A description of the procedures for reaching a final decision on the draft permit including the following:

(I) The beginning and ending dates of the comment period under § 270a.80 and the address where comments will be received.

(II) Procedures for requesting a hearing and the nature of that hearing.

(III) Other procedures by which the public may participate in the final decision.

(IV) The name and telephone number of a person to contact for additional information.

(13) At the time that a final permit is issued, the Department also issues a response to comments. The response does the following:

(i) Specifies which provisions, if any, of the draft permit changed in the final permit decisions, and the reasons for the change.

(ii) Briefly describes responses to significant comments on the draft permit raised during the public comment period or during a hearing.

(14) The Department makes its response to public comments available to the public.

**§ 270a.12. Confidentiality of information.**

40 CFR 270.12 (relating to confidentiality of information) is not incorporated by reference. The confidentiality of information is as follows:

(1) Information submitted to the Department under this subsection may be claimed as confidential by the applicant. Any claim shall be asserted at the time of submission in the manner prescribed in paragraph (2) and the application form or instructions by stamping the words "confidential business information" on each page containing the information. If a claim is not made at the time of submission, the Department will make the information available to the public without further notice.

(2) Claims of confidentiality for permit application information shall be substantiated at the time the application is submitted and shall address the following:

(i) The portions of the information claimed to be confidential.

(ii) The length of time the information is to be treated as confidential.

(iii) The measures taken to guard against undesired disclosure of the information to others.

(iv) The extent the information has been disclosed to others and the precautions taken in connection with that disclosure.

(v) A copy of any pertinent confidentiality determinations by EPA or another Federal agency.

(vi) The nature of the substantial harm to the competitive position by disclosure of the information, the reasons it should be viewed as substantial and the relationship between the disclosure and the harm.

(3) The Department keeps confidential information in a secure repository and does not make the information available for inspection by the general public.

(4) The Department makes confidential information available to any State or Federal agency for the purpose of administration of any State or Federal law.

#### **§ 270a.13. Contents of Part A of the permit application.**

In addition to the requirements incorporated by reference, Part A of the permit application includes information to demonstrate compliance with the siting criteria in Chapter 269a (relating to siting).

#### **§ 270a.14. Additional applicant requirements.**

(a) In addition to the requirements incorporated by reference, permit applicants shall also comply with § 270a.83 (relating to preapplication public meeting and notice).

(b) 40 CFR 270.14(b)(20) (relating to contents of Part B: general requirements) is not incorporated by reference.

#### **§ 270a.29. Permit denial.**

(a) 40 CFR 270.29 (relating to permit denial), is not incorporated by reference.

(b) If the Department tentatively decides to deny the permit application, it will issue a notice of intent to deny the application. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as a draft permit prepared under § 270a.10(c) (relating to general application requirements). If, after issuing a notice of intent to deny, the Department's final decision is to issue the permit, the notice of intent to deny is withdrawn and the Department proceeds to prepare a draft permit under § 270a.10(c).

### **Subchapter C. PERMIT CONDITIONS**

Sec.

270a.32. Establishing permit conditions.

#### **§ 270a.32. Establishing permit conditions.**

40 CFR 270.32(a) and (c) (relating to establishing permit conditions) is not incorporated by reference. In 40 CFR 270.32(b)(2), the term "section 3005" is replaced with "sections 501—503 of the act" (35 P.S. §§ 6018.501—6018.503) and the term "state director" is deleted.

### **Subchapter D. CHANGES TO PERMITS**

Sec.

270a.41. Procedures for modification, termination or revocation and reissuance of permits.

#### **§ 270a.41. Procedures for modification, termination or revocation and reissuance of permits.**

Instead of the procedures required in 40 CFR Part 124 (relating to procedures for decisionmaking), permits are modified, terminated or revoked and reissued in accordance with the following:

(1) The Department may modify, revoke and reissue, or terminate a permit either at the request of an interested person, including the permittee, or upon the Department's initiative for reasons specified in 40 CFR 270.41—270.43 (relating to modification or revocation and reissuance of permits; permit modification at the request of the permittee; and modification or revocation and reissuance of permits, and termination of permits) or for a reason authorized under the act, this article or the terms and conditions of the permit. A request shall be in writing and contain facts or reasons supporting the request.

(2) If the Department decides the request is not justified, the Department sends a brief written response giving a reason for the decision to the requester. The Department's refusal to modify, or revoke and reissue a permit under a request is not subject to public notice, comment or hearings.

(3) If the Department tentatively decides to modify, terminate or revoke and reissue a permit, in accordance with the incorporated provisions of 40 CFR 270.41, 270.42(c) or 270.43 the Department prepares a draft permit under § 270a.10(c) (7—10) (relating to general application requirements) incorporating the proposed changes. The Department may request additional information from the permittee and may require the permittee to submit an updated permit application. In the case of revoked and reissued permits, the Department requires the submission of a new application. The permittee shall submit additional information or an updated or new application under a request by the Department within the time specified by the Department.

(4) In a permit modification under this section, only those conditions to be modified are reopened when a new draft permit is prepared. Other aspects of the existing permit remain in effect for the duration of the permit. When the permit is revoked and reissued, the entire permit is reopened just as if the permit expired and is reissued. During a revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

(5) If the Department tentatively decides to terminate a permit in accordance with the incorporated provisions of 40 CFR 270.43, it issues a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as a draft permit prepared under § 270a.10(c)(7—10).

(6) Class 1 modifications, as listed in the Appendix I to 40 CFR 270.42, are not subject to the requirements of this section.



**§ 270a.42. Permit modification at the request of the permittee.**

(a) Instead of complying with 40 CFR Part 124.10(c)(ix) (relating to public notice of permit actions and public comment period) the permittee shall send a notice to those persons in § 270a.80(d)(iv).

(b) Instead of the appeal procedure in 40 CFR 245.19 (relating to appeal of RCRA, UIC, NPDES permits). The Department's decision to grant or deny permit modifications may be appealed to the EHB under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514).

(c) Applications seeking Class 2 and 3 permit modifications shall comply with § 270a.83 (relating to preapplication public meeting and notice).

**§ 270a.43. Permit termination.**

The procedures for permit termination are found in § 270a.41 (relating to procedures for modification, termination or revocation and reissuance of permits).

**Subchapter E. EXPIRATION AND CONTINUATION OF PERMITS**

Sec.

270a.51. Continuation of existing permits.

**§ 270a.51. Continuation of existing permits.**

40 CFR 270.51 (relating to continuance of expiring permits) is not incorporated by reference.

**Subchapter F. SPECIAL FORMS OF PERMITS**

Sec.

270a.60. Permits by rule.

270a.62. Hazardous waste incinerator permits.

270a.64. Interim permits for UIC wells.

270a.66. Permits for boilers and industrial furnaces burning hazardous waste.

**§ 270a.60. Permits by rule.**

(a) Relative to the requirements incorporated by reference, the following are substituted for the introductory paragraph in 40 CFR 270.60 (relating to permits by rule): In addition to other provisions of this chapter, the activities listed in this section are deemed to have a hazardous waste management permit if the conditions listed are met. The Department may require an owner or operator with a permit by rule under this section to apply for, and obtain, an individual permit when the facility is not in compliance with the applicable requirements or is engaged in an activity that harms or presents a threat of harm to the health, safety or welfare of the people or the environment of this Commonwealth.

(b) In addition to the requirements incorporated by reference, the following requirements apply:

(1) The owner or operator of an elementary neutralization unit or a wastewater treatment unit is deemed to have a permit by rule, if the owner or operator complies with the following requirements:

(i) The facility treats hazardous waste generated onsite.

(ii) The facility has an NPDES permit, if required, and complies with the conditions of that permit.

(iii) Section 264a.11 (relating to identification number and transporter license) and 40 CFR 264.11 (relating to identification number).

(iv) Chapter 264a, Subchapter D and 40 CFR Subparts C and D (relating to contingency plan and emergency procedures; permit conditions; and changes to permit).

(v) 40 CFR Part 265, Subpart Q (relating to chemical, physical and biological treatment), except for 40 CFR 265.400 (relating to applicability).

(vi) For the purposes of this subsection, the owner or operator of an elementary neutralization unit or wastewater treatment unit permit by rule facility may treat wastes generated at other facilities operated or owned by the same generator, if the generator provides prior written notice to the Department and the wastes are shipped under a manifest in compliance with § 262a.20 and 40 CFR 262.20 (relating to general requirements; and general requirements).

(vii) The Department may, under special circumstances, approve on a case-by-case basis the receipt and treatment of wastes generated offsite by a different generator for treatment at a facility regulated under this subsection without the treatment of the wastes resulting in the loss of permit by rule status under this subsection.

(2) A generator that treats its own hazardous waste in containers, tanks or containment buildings is deemed to have a permit by rule, if the owner or operator complies with the following requirements:

(i) The facility is a captive facility and the only waste treated is generated onsite.

(ii) The notification requirements of 40 CFR 264.11 (relating to notification of hazardous waste activities) and the applicable requirements of 40 CFR Part 264, Subparts A—D, I, J and DD and Chapter 264a, Subchapters A, B, D, I, J and DD.

(iii) The applicable requirements of 40 CFR 262.34 (relating to accumulation).

(iv) Except for the characteristic of ignitability, the hazardous waste is not being rendered nonhazardous by means of dilution.

(3) The owner or operator of a battery manufacturing facility reclaiming spent, lead-acid batteries is deemed to have a permit by rule for treatment prior to the reclamation of the spent, lead-acid batteries, if the owner or operator complies with the following requirements:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of 40 CFR Part 264, Subparts A—E, I—L and DD and Chapter 264a, Subchapters A, B, D, E, I—L and DD.

(4) The owner or operator of a facility that reclaims hazardous waste onsite, at the site where it is generated is deemed to have a permit by rule for treatment prior to the reclamation, if the owner or operator complies with the following requirements:

(i) The notification requirements of 40 CFR 264.11.

(ii) The applicable requirements of Chapter 262a and Chapter 264a, Subchapters A, B, D, E, I, J and DD and 40 CFR Part 262 and 264, Subparts A—E and I, J and DD.

(iii) For the purposes of this subsection, onsite reclamation includes reclamation of materials generated at other facilities operated or owned by the same generator, if the generator provides prior written notice to the Department and the wastes are shipped under a manifest in compliance with § 262a.20 (relating to general requirements) and 40 CFR Part 262.20 (relating to manifest).

(iv) The Department may, under special circumstances, approve on a case-by-case basis the receipt and reclamation of wastes generated offsite by a different generator for reclamation at a facility regulated under this subsection.

tion without the reclamation of the wastes resulting in the loss of onsite reclamation status under this subsection.

(6) The owner or operator of a facility that treats recyclable materials to make the materials suitable for reclamation of economically significant amounts of the precious metals identified in 40 CFR Part 266, Subpart F (relating to recyclable materials utilized for precious metal recovery) is deemed to have a permit by rule if the owner or operator complies with the following:

(i) The notification requirements of 40 CFR 264.11 (relating to identification number).

(ii) The applicable requirements of Chapter 264a, Subchapters A, B, D, E, I, J and DD and 40 CFR Part 264, Subparts A—D, I, J and DD.

(c) In addition to the requirements incorporated by reference:

(1) With respect to any permit by rule facility under subsection (b)(3)—(6), the Department may, upon written application from a person subject to these paragraphs, grant a variance from one or more specific provision of those paragraphs in accordance with this subsection.

(2) In granting a variance, the Department may impose specific conditions reasonably necessary to assure that the subject activity results in a level of protection of the environment and public health equivalent to that which would have resulted from compliance with the suspended provisions. Any variance granted under this section will be at least as stringent as the requirements of section 3010 of the RCRA (42 U.S.C.A. § 6930) and regulations adopted thereunder.

#### **§ 270a.62. Hazardous waste incinerator permits.**

Instead of the notification required by 40 CFR 124.10 (relating to public notice of permit actions and public comment period), the Department sends notice to all persons listed in § 270a.80(4)(i)(D)(E) and (F).

#### **§ 270a.64. Interim permits for UIC wells.**

40 CFR 270.64 (relating to interim permits for UIC wells) is not incorporated by reference.

#### **§ 270a.66. Permits for boilers and industrial furnaces burning hazardous waste.**

Instead of the notification required by 40 CFR 124.10 (relating to public notice of permit actions and public comment period), the Department sends notice to all persons listed in § 270a.80(4)(i)(D)—(F) (relating to public notice and comment requirements).

### **Subchapter G. INTERIM STATUS**

Sec.

270a.72. Changes during interim status.

#### **§ 270a.72. Changes during interim status.**

Relative to the requirements incorporated by reference, the substitution of terms in § 260a.3 (relating to terminology and citations related to Federal regulations) for the term "EPA" does not apply to 40 CFR 270.72(a)(5) and (b)(5) (relating to changes during interim status).

### **Subchapter H. PUBLIC NOTICE AND HEARINGS**

Sec.

270a.80. Public notice and comment requirements.

270a.81. Public hearings.

270a.82. Public availability of information.

270a.83. Preapplication public meeting and notice.

270a.84. Information repository.

#### **§ 270a.80. Public notice and comment requirements.**

(a) The Department gives public notice of the following actions:

(1) An application for a permit or a Class 2 or Class 3 permit modification is tentatively denied under §§ 270a.29 and 270a.41 and 40 CFR 270.29 and 270.41.

(2) A draft permit is prepared under § 270a.10(c) (relating to general application requirements).

(3) A hearing is scheduled under § 270a.81(b) (relating to public hearings).

(4) A closure/postclosure plan is received in accordance with the incorporated requirements of 40 CFR 264.112, 265.112, 264.118 or 265.118.

(b) A public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (a) provides for at least 45 days for public comment.

(c) The Department gives public notice of a public hearing at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit, and the two notices may be combined.

(d) The Department gives public notice of activities described in subsection (a) by the following methods:

(1) By mailing a copy of a notice to the following, persons otherwise entitled to receive notice under this paragraph may waive the right to receive notice for classes and categories of permits:

(i) The applicant.

(ii) An agency which the Department knows has issued or is required to issue a RCRA, underground injection control, prevention of significant deterioration (or other permit under the Clean Air Act), NPDES, 404, sludge management permit or ocean dumping permit under the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. No. 92-532, 86 Stat. 052) for the same facility or activity, including the EPA.

(iii) An appropriate Federal or State agency with jurisdiction over fish, shellfish and wildlife resources or coastal zone management plans, State historic preservation officers, advisory council on historic preservation and other appropriate government authorities, including affected states.

(iv) A person on a mailing list developed by the Department, that includes a person who submits to the Department a request in writing to be on the list, a person solicited for area lists from participants in past permit proceedings in that area, and a member of the public notified of the opportunity to be put on the mailing list through periodic publication in the public press and in regional and State-funded newsletters, environmental bulletins or State law journals. The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of a person who fails to respond to the request.

(v) Units of local government having jurisdiction over the area where the facility is located.

(vi) State agencies having authority under State statute with respect to the construction or operation of the facility.

(2) Publication of a notice in the *Pennsylvania Bulletin* and in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations.

(3) In a manner constituting legal notice to the public under State statute.

(4) By other methods reasonably calculated to give actual notice of the action in question to a person potentially affected by it, including press releases or another forum or medium to elicit public participation.

(e) A public notice issued under this section shall contain the following minimum information:

(1) The name and address of the office processing the permit action for which notice is being given.

(2) The name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit.

(3) A brief description of the business conducted at the facility or activity described in the permit application or the draft permit.

(4) The name, address and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, the statement of basis or fact sheet, and the application.

(5) A brief description of the comment procedures required by § 270a.81 (relating to public hearings), the time and place of a hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision.

(6) Additional information which the Department considers necessary or proper.

(f) In addition to the general public notice described in subsection (e), the public notice of a hearing under § 270a.81(b) shall contain the following information:

(1) A reference to the date of previous public notices relating to the permit.

(2) The date, time and place of the hearing.

(3) A brief description of the nature and purpose of the hearing, including the applicable procedures.

(g) In addition to the general public notice described in subsection (e), a person identified in subsection (d)(1)(i) and (ii) will be mailed a copy of the fact sheet or statement of basis, the draft permit and, if applicable, the permit application.

**§ 270a.81. Public hearings.**

(a) During the public comment period provided under § 270a.80 (relating to public notice and comment requirements), an interested person may submit written comments on the draft permit and may request a public hearing, if a hearing is not already scheduled. A request for a public hearing shall be in writing and state the nature of the issues proposed to be raised in the hearing. The Department considers comments in making its final decision and answers these comments as provided in § 270a.10(c) (relating to general application requirements and permit issuance procedures).

(b) The Department follows the following procedures in a public hearing held under this subchapter:

(1) The Department holds a public hearing whenever, on the basis of requests received under subsection (a), it determines that a significant degree of public interest in a draft permit exists.

(2) The Department may hold a public hearing whenever a hearing might clarify issues involved in the permit decision.

(3) The Department holds a public hearing whenever it receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice, under § 270a.80.

(4) The Department schedules, when possible, a hearing under this section at a location convenient to the nearest population center to the proposed facility.

(5) The Department gives public notice of the hearing under subsection (a).

(6) A person may submit oral or written statements and data concerning the draft permit before, during or after the public hearing, as long as the Department receives the statements and data during the public comment period. The Department may set reasonable limits upon the time allowed for oral statements and may require the submission of statements in writing. The public comment period under § 270a.80 is automatically extended to the close of a public hearing under this section. The Department's hearing officer may also extend the comment period by so stating at the hearing.

(7) The Department makes a tape recording or written transcript of the hearing available to the public.

**§ 270a.82. Public availability of information.**

(a) Information provided to the Department under this article is made available to the public in accordance with the current Departmental policy on public information. The Department makes every effort to respond to written requests in a timely manner by providing the materials requested or a written response explaining why the request cannot be honored.

(b) The Department releases material obtained regarding facilities and sites for the treatment, storage and disposal of hazardous waste, unless the material is subject to a claim of confidentiality under § 270a.12 (relating to confidentiality of information) or other law or regulation. These records include:

(1) Permit applications and modifications.

(2) Annual reports.

(3) Closure plans.

(4) Notification of facility closure.

(5) Contingency plan incidence reports.

(6) Delisting petitions and other petitions for variances or waivers.

(7) Financial responsibility instruments.

(8) Environmental monitoring data, such as groundwater monitoring data.

(9) Transporter spill reports.

(10) International shipment reports.

(11) Manifest exception, discrepancy and unmanifested waste reports.

(12) EPA facility identification numbers.

(13) General correspondence with the facility.

(14) Enforcement orders.

(15) Inspection reports.

(16) Results of corrective action investigations.

**§ 270a.83. Preapplication public meeting and notice.**

(a) *Applicability*

(1) This section applies to RCRA Part B applications seeking initial permits for hazardous waste management units over which the Department has permit issuance authority.

(2) This section also applies to RCRA Part B applications seeking renewal of permits for the units, if the renewal application is proposing a significant change in facility operations.

(3) For the purposes of this section, a "significant change" is a change that would qualify as a Class 2 or Class 3 permit modification under 40 CFR 270.42 (relating to permit modification at the request of the permittee) and § 270a.42 (relating to permit modification at the request of the permittee).

(4) This section does not apply to permit modifications under 40 CFR 270.42 and § 270a.42 or to applications that are submitted for the sole purpose of conducting postclosure activities or postclosure activities and corrective action at a facility.

(b) Prior to the submission of a Part B RCRA permit application for a facility, the applicant shall hold at least one meeting with the public to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under subsection (b), and copies of any written comments or materials submitted at the meeting, to the Department as a part of the Part B application, under 40 CFR 270.14(b) (relating to contents of Part B: general requirements).

(d) The applicant shall provide public notice of the preapplication meeting at least 30 days prior to the meeting. The applicant shall maintain, and provide to the Department upon request, documentation of the notice.

(1) The applicant shall provide public notice in the following forms:

(i) *Newspaper advertisement.* The applicant shall publish a notice, fulfilling the requirements in paragraph (2), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Department will instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, if the Department determines that the publication is necessary to inform the affected public. The notice shall be published as a display advertisement.

(ii) *Visible and accessible sign.* The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (2). If the applicant places the sign on the facility property, the sign shall be large enough to be readable from the nearest point where the public would pass by the site.

(iii) *Broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in paragraph (2), at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Department.

(iv) *Notice to the Department.* The applicant shall send a copy of the newspaper notice to the Department and to the appropriate units of State and local government.

(2) The notices required under paragraph (1) shall include the following:

(i) The date, time and location of the meeting.

(ii) A brief description of the purpose of the meeting.

(iii) A brief description of the facility and proposed operations, including the address or a map—for example, a sketched or copied street map—of the facility location.

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting.

(v) The name, address and telephone number of a contact person for the applicant.

**§ 270a.84. Information repository.**

(a) This section applies to applications seeking hazardous waste management permits for hazardous waste management units over which the Department has permit issuance authority.

(b) The Department assesses the need, on a case-by-case basis, for an information repository.

(1) When assessing the need for an information repository, the Department considers a variety of factors, including:

(i) The level of public interest.

(ii) The type of facility.

(iii) The presence of an existing repository.

(iv) The proximity to the nearest copy of the administrative record.

(2) If the Department determines, at any time after submittal of a permit application, that there is a need for a repository, the Department notifies the facility that it shall establish and maintain an information repository. See 40 CFR 270.30(m) (relating to conditions applicable to all permits) for similar provisions relating to the information repository during the life of a permit.

(c) The information repository shall contain the documents, reports, data and information deemed necessary by the Department to fulfill the purposes for which the repository is established. The Department has the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. The Department specifies a more appropriate site if, due to problems with the location, hours of availability, access or other relevant considerations, the Department finds the site unsuitable for the purposes and persons for which it was established.

(e) The Department specifies requirements for informing the public about the information repository. At a minimum, the facility shall provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner or operator is responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Department. The Department may close the repository based on the factors in subsection (b).

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