

PENNSYLVANIA BULLETIN

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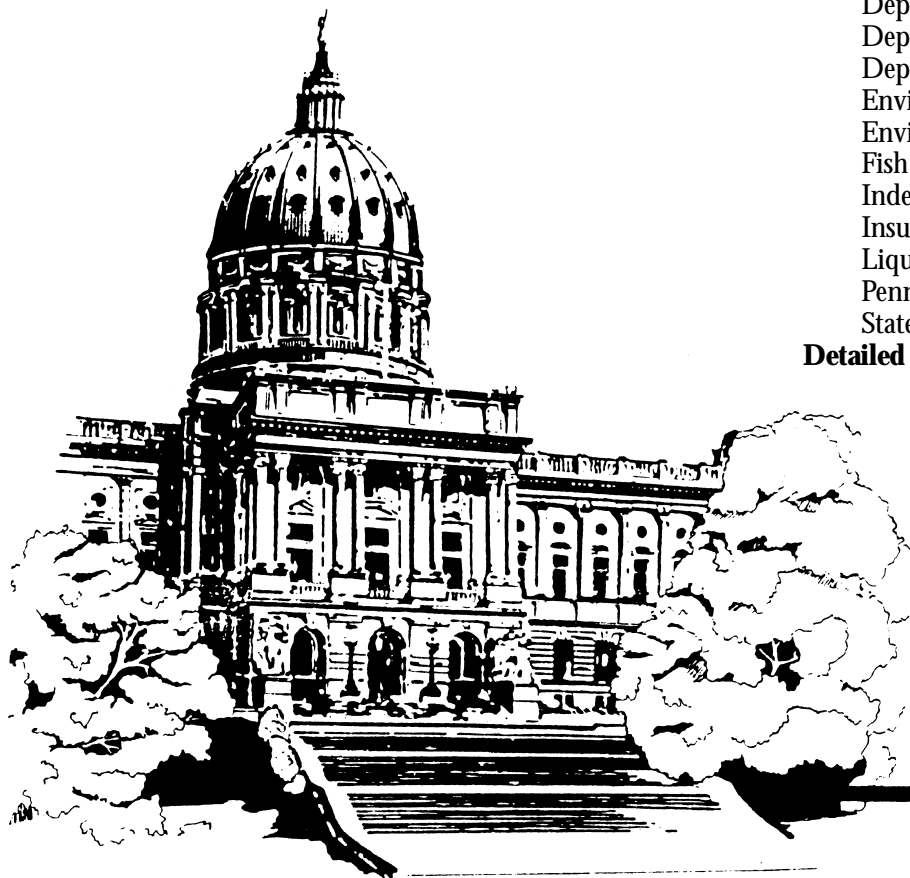
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Insurance Department
Liquor Control Board
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No. 335, October 2002

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Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

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

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

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THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

[204 PA. CODE CH. 29]

Promulgation of Financial Regulations pursuant to 42 Pa.C.S. § 3502(a); No. 244; Judicial Administration Doc. No. 1

Order

Per Curiam:

And now, this 23rd day of September, 2002, it is Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the following Financial Regulations. The fees outlined in the Financial Regulations are effective as of January 1, 2003.

To the extent that notice of proposed rule-making may be required by Pa.R.J.A. No.103, the immediate promulgation of the regulations is hereby found to be in the interests of efficient administration.

This Order is to be processed in accordance with Pa.R.J.A. No. 103(b) and is effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter K. COSTS, FINES AND FEES

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PART IV. FINANCIAL MATTERS

CHAPTER 17. GOVERNANCE OF THE SYSTEM

CHAPTER 35. BUDGET AND FINANCE

Subchapter A. GENERAL PROVISIONS

§ 29.401. Scope.

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized the Court Administrator of Pennsylvania to promulgate regulations relating to the accounting methods to be utilized in connection with the collection of fees and costs charged and collected by prothonotaries, and clerks of courts of all courts of common pleas, or by any officials designated to perform the functions thereof, as well as by the minor judiciary, including district justices, Philadelphia Municipal Court, Philadelphia Traffic Court and Pittsburgh Magistrates Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing authority under Section 3502(a) of the Judicial Code, 42 Pa.C.S.

§ 3502(a), the following regulations are adopted to implement Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

§ 29.402. Costs under 42 Pa.C.S.A. § 1725.1.

(a) *Civil cases.*—In calendar year 2003, the costs to be charged by district justices in every civil case, except as otherwise provided in this section, shall be as follows:

(1) Actions involving \$500 or less	\$38.50
(2) Actions involving more than \$500 but not more than \$2,000	\$51.50
(3) Actions involving more than \$2,000 but not more than \$4,000	\$64.50
(4) Actions involving more than \$4,000 but not more than \$8,000	\$96.50
(5) Landlord-tenant actions involving less than \$2,000	\$58.00
(6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000	\$70.50
(7) Landlord-tenant actions involving more than \$4,000 but not more than \$8,000	\$96.50
(8) Order of execution	\$29.00
(9) Objection to levy	\$13.00
(10) Reinstatement of complaint	\$6.50
(11) Entering Transcript on Appeal or Certiorari	\$3.50

Said costs shall not include, however, the cost of postage and registered mail which shall be borne by the plaintiff.

(b) *Criminal cases.*—In calendar year 2003, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

(1) Summary conviction, except motor vehicle cases	\$37.00
(2) Summary conviction, motor vehicle cases, other than paragraph (3)	\$29.00
(3) Summary conviction, motor vehicle cases, hearing demanded	\$35.00
(4) Misdemeanor	\$42.00
(5) Felony	\$48.50

Such costs shall not include, however, the cost of postage and registered mail which shall be paid by the defendant upon conviction.

(c) *Unclassified costs or charges.*—In calendar year 2003, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

(1) Entering transcript of judgment from another member of the minor judiciary	\$6.50
(2) Marrying each couple, making record thereof, and certificate to the parties	\$32.50
(3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse)	\$13.00
(4) Issuing a search warrant (except as provided in subsection (d))	\$13.00

(5) Any other issuance not otherwise provided in this subsection \$13.00

§ 29.403. Fines under 42 Pa.C.S. § 3571.

In calendar year 2003, Commonwealth portion of fines, etc.

* * * * *

(2) Amounts payable to the Commonwealth:	
(i) Summary conviction, except motor vehicle cases	\$12.98
(ii) Summary conviction, motor vehicle cases other than subparagraph (iii)	\$12.98
(iii) Summary conviction, motor vehicle cases, hearing demanded	\$12.98
(iv) Misdemeanor	\$16.80
(v) Felony	\$25.87
(vi) Assumpsit or trespass involving:	
(A) \$500 or less	\$16.05
(B) More than \$500 but not more than \$2,000	\$25.74
(C) More than \$2,000 but not more than \$4,000	\$38.70
(D) More than \$4,000 but not more than \$8,000	\$64.34
(vii) Landlord-tenant proceeding involving:	
(A) \$2,000 or less	\$25.78
(B) More than \$2,000 but not more than \$4,000	\$32.05
(C) More than \$4,000 but not more than \$8,000	\$45.04
(viii) Objection to levy	\$6.50
(ix) Order of execution	\$19.33
(x) Issuing a search warrant (except as provided in section 1725.1(d)(relating to costs))	\$9.10

[Pa.B. Doc. No. 02-1726. Filed for public inspection October 4, 2002, 9:00 a.m.]

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
[204 PA. CODE CH. 211]

Promulgation of Consumer Price Index pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4); No. 243; Judicial Administration Doc. No. 1

Order

Per Curiam:

And now, this 23rd day of September, 2002, it is Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain

and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price Index for calendar year 2001 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

Annex A

TITLE 204. JUDICIAL SYSTEM
GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE
OF PENNSYLVANIA COURTS

CHAPTER 211. CONSUMER PRICE INDEX

§ 211.1. Consumer Price Index.

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for calendar year 2001 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended). See, No. 243 Judicial Administrative Docket No. 1.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U.S. City Average, for calendar year 2001 was 1.6% percent. (See, U.S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, April 19, 2002.)

[Pa.B. Doc. No. 02-1727. Filed for public inspection October 4, 2002, 9:00 a.m.]

Title 234—RULES OF
CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Order Adopting New Rule 117; No. 284 Criminal
Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining new Rule of Criminal Procedure 117. This new rule prohibits the imposition of court fees against a defendant when a criminal proceeding is conducted using two-way simultaneous audio-visual communication. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 20th day of September, 2002, upon the recommendation of the Criminal Procedural Rules Committee, this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Rule of Criminal Procedure 117 is adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 2003.

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 1. SCOPE OF RULES, CONSTRUCTION
AND DEFINITIONS, LOCAL RULES**

PART A. Business of the Courts

Rule 117. Court Fees Prohibited For Two-Way Simultaneous Audio-Visual Communication.

When a criminal proceeding is conducted by using two-way simultaneous audio-visual communication, the court shall not impose a fee upon the defendant for its use.

Comment

This rule implements the March 13, 2002 Order of the Supreme Court of Pennsylvania (No. 241 Judicial Administration; Doc. No. 1) that states, "No fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology." See 32 Pa.B. 1642 (March 30, 2002). When a criminal proceeding is conducted using two-way simultaneous audio-visual communication, this rule precludes the imposition of fees upon a defendant for the use of the two-way simultaneous audio-visual communication. See, e.g., Rules 540 (Preliminary Arraignment) and 571 (Arraignment). Two-way simultaneous audio-visual communication is a type of advanced communication technology as defined in Rule 103 (Definitions).

A "fee" as used in this rule includes, but is not limited to, a cost, charge, surcharge, and service charge.

Official Note: New Rule 117 adopted September 20, 2002, effective January 1, 2003.

Committee Explanatory Reports:

Final Report explaining new Rule 117 published with the Court's Order at 32 Pa.B. 4815 (October 4, 2002).

FINAL REPORT ¹

New Pa.R.Crim.P. 117

**COURT FEES PROHIBITED FOR TWO-WAY
SIMULTANEOUS AUDIO-VISUAL COMMUNICATION
IN CRIMINAL PROCEEDINGS**

On September 20, 2002, effective January 1, 2003, upon recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania adopted new Rule 117 (Court Fees Prohibited For Two-Way Simultaneous Audio-Visual Communication). The new rule makes it clear that when a criminal proceeding, such as a preliminary arraignment, is conducted by using two-way simultaneous audio-visual communication, the court shall not impose a fee upon the defendant for its use.

On March 13, 2002, the Supreme Court promulgated an Order stating, "No fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology." See 32 Pa.B. 1642 (March 30, 2002). Subsequently, the Committee received a directive from the Court to draft a proposal implementing the fee prohibition in the Criminal Rules. We recognized that the impetus for the Court's Order and directive to the Committee was the fact that as judicial districts instituted the use of advanced communication technology ("ACT"), many of them also began assessing fees against defendants when the criminal proceedings, such as preliminary arraignments, are conducted using two-way si-

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

multaneous audio-visual communication. This led to questions about the propriety of such fees, as well as to the authority to assess these fees.

In developing our proposal, the members reviewed the recent changes to the Criminal Rules permitting the use of ACT in criminal proceedings. See Committee's Final Report, 32 Pa.B. 2591 (May 25, 2002). The primary reasons advanced for using ACT and two-way simultaneous audio-visual communication in criminal proceedings included, inter alia, that using the technology would be time saving, cost efficient, and convenient for the courts. However, the Committee, in developing the ACT proposal, never envisioned fees would be assessed against defendants for the use of two-way simultaneous audio-visual communication in criminal proceedings. The Committee had misgivings about such fees, particularly when defendants are not given the option to appear in person before the court for the proceeding, rather than proceed using ACT.

In developing a rule to implement the March 13, 2002 Order prohibiting these fees, the Committee expressed concern that a prohibition against fees when ACT is used could cause confusion. The Rule 103 definition of the new term "advanced communication technology,"² is broader than what the Committee believes is intended to be covered by a rule prohibition on fees in these cases. Accordingly, new Rule 117 provides when a criminal proceeding is conducted by using two-way simultaneous audio-visual communication, the court shall not impose a fee upon the defendant for its use. The Comment explains: 1) the new rule implements the Court's March 13, 2002 Order; 2) two-way simultaneous audio-visual communication is a form of advanced communication; and 3) the term "fee" includes costs, charges, surcharges, and service charges.

[Pa.B. Doc. No. 02-1728. Filed for public inspection October 4, 2002, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUCKS COUNTY

Rules of Judicial Administration; 5000-2(h) and 5000.7

Order

And Now, this 13 day of September, 2002, upon consideration and analysis of information concerning ordinary and reasonable fees associated with transcribing of court work by court reporter systems and related personnel or any contractor, the following procedures and rates are hereby adopted:

1. Pursuant to Rule of Judicial Administration 5000.7, Fees for Transcripts, specifically 5000.7 (a) through (2)(e), in regard to where the Commonwealth or its sub-division is liable for the costs (also known as Public Ordered Transcript) all court reporter transcription shall strictly comply with these fees.

² Rule 103 defines the term "advanced communication technology" as "any communication equipment that is used a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail."

2. Pursuant to the provision of Rule of Judicial Administration, specifically 5000.7 (2)(f), the Court of Common Pleas hereby establishes the following schedule of transcript fees for any person, party or entity other than the Commonwealth, or one of its political subdivisions, not specified in Rule 5000.7, or other than Court Ordered Transcript known as Party Ordered Transcript.

- | | |
|--|-----------------|
| a. Original and first carbon (copy) | \$2.50 per page |
| b. Each additional carbon (copy) | \$1.75 per page |
| c. Expedited original and one carbon (copy) | \$3.75 per page |
| d. Additional carbon (copy) | \$2.55 per page |
| e. Daily original and one carbon (copy) | \$5.00 per page |
| f. Additional daily carbon (copy) | \$3.50 per page |
| g. Real time Reporting in addition to copies | \$1.00 per page |

3. The Court of Common Pleas will undertake a review and analysis of the fees for transcription that are within its jurisdiction every even numbered year following the effective date of this Order, and if the Court determines that modifications are necessary and justifiable, a new Order effective the first of January of the next odd numbered year will be established.

4. The Court may require that a report or listing of completed transcript work be provided to the District Court Administrator or designee, as prescribed, in addition to the formal request for transcription of Rules of Judicial Administration 5005.3(a)(3).

By the Court

R. BARRY MCANDREWS,
President Judge

[Pa.B. Doc. No. 02-1729. Filed for public inspection October 4, 2002, 9:00 a.m.]

CARBON COUNTY

Amendment of Local Rule of Civil Procedure L205.3 Filing Pleadings and Other Legal Papers with the Prothonotary, Originals and Copies; No. 95-2427

Administrative Order 13-2002

And Now, this 23rd day of September, 2002, in order to streamline the procedure and provide efficient and consistent filing procedures, it is hereby

Ordered and Decreed that effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Carbon County Court of Common Pleas hereby *Amends* Local Rule of Civil Procedure L205.3 governing the procedure for Filing Pleadings and Other Legal Papers with the Prothonotary in regards to originals and copies.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Civil Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection a copy of the Order in the Prothonotary's Office.

By the Court

RICHARD W. WEBB,
President Judge

Rule L205.3. Filing Pleadings and Other Legal Papers with the Prothonotary. Originals and Copies.

- (a) 1. The use of backers and/or toppers is prohibited.
2. Original pleadings shall be held together by paper clip or expandable spring-loaded clip.
3. Original pleadings shall not be highlighted by the use of colored markers. Highlighting of text can be done on the computer by bolding or using a different shape and size of font.
4. All documents shall be single-sided.
5. Paper size shall not exceed 8 1/2" x 11" and shall be on good quality paper.
6. Attachments smaller than 8 1/2" x 11" paper shall be attached to regular size paper by using scotch tape.
7. All exhibit tabs shall appear at the bottom of the pleading.
8. Pages must be consecutively numbered beginning with page 2 and said number shall appear in the upper right hand corner of the pleading.
9. All copies attached to the pleadings must be clear and legible.
10. A Civil Cover Sheet, in the form prescribed by Exhibit "C" of these Rules, shall be attached to any document commencing an action (whether the action is commenced by Complaint, Writ of Summons, Notice of Appeal, or by Petition) in the Prothonotary's office. The information requested is necessary to allow the Court to properly monitor, control and dispose cases filed. A copy of the Civil Cover Sheet must also be attached to service copies of the document commencing an action.

Court of Common Pleas of Carbon County		For Prothonotary's/Clerk's Use only (Docket Number)
Civil Cover Sheet		
A. PLAINTIFF'S NAME:		DEFENDANT'S NAME:
PLAINTIFF'S ADDRESS:		DEFENDANT'S ADDRESS:
PLAINTIFF'S NAME:		DEFENDANT'S NAME:
PLAINTIFF'S ADDRESS:		DEFENDANT'S ADDRESS:
TOTAL NUMBER OF PLAINTIFFS		TOTAL NUMBER OF DEFENDANTS
B. AMOUNT IN CONTROVERSY <input type="checkbox"/> \$25,000 or less <input type="checkbox"/> More than \$25,000 <input type="checkbox"/> Assessment of damages hearing required <input type="checkbox"/> Assessment of damages hearing not required	C. COMMENCEMENT OF ACTION <input type="checkbox"/> 1. Complaint <input type="checkbox"/> 2. Writ of Summons <input type="checkbox"/> 3. Notice of Appeal <input type="checkbox"/> 4. Petition Action	D. OTHER <input type="checkbox"/> 5. Arbitration <input type="checkbox"/> 10. Transfer from Other Jurisdiction <input type="checkbox"/> 6. Jury <input type="checkbox"/> 11. Minor's Compromise <input type="checkbox"/> 7. Non Jury <input type="checkbox"/> 12. Survival Action <input type="checkbox"/> 8. Class Action <input type="checkbox"/> 13. Wrongful Death Action (Involving minors) <input type="checkbox"/> 9. In-Forma Pauperis
E. TRACK ASSIGNMENT REQUESTED (CHECK ONE) COURT HAS FINAL APPROVAL FOR ALL TRACK ASSIGNMENTS		
_____ FAST _____ STANDARD _____ COMPLEX If complex, state reasons:		
F. CODE AND CASE TYPE (See instructions)		G. CODE AND CASE SPECIFIC (See instructions)
H. STATUTORY BASIS FOR CAUSE OF ACTION (See instructions)		
I. RELATED PENDING CASES (List by Docket Number—Indicate whether the related cases have been consolidated)		
J. TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant. Papers may be served at the address set forth below.		
NAME OF PLAINTIFF'S/APPELLANT'S ATTORNEY		ADDRESS
PHONE NUMBER	SUPREME COURT IDENTIFICATION NUMBER	E-MAIL ADDRESS:
DATE: _____		SIGNATURE: _____

SEE INSTRUCTIONS ON NEXT PAGE

Instructions for Completing Civil Cover Sheet

Carbon Local Civil Rule 205.3 requires that a Civil Cover Sheet be attached to any document commencing an action (whether the action is commenced by Complaint, Writ of Summons, Notice of Appeal, or Petition). The information requested is necessary to enable the Court to properly monitor, control and dispose of cases filed. A copy of the Civil Cover Sheet must be attached to service copies of the document commencing the action. The attorney (or pro se party) filing a case shall complete the form as follows:

A. Parties**i. Plaintiffs/Defendants**

Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency or corporation, use the full name of the agency or corporation. In the event there are more than two plaintiffs and/or two defendants, list the additional parties on the Supplemental Parties Form. Husband and wife should be listed as separate parties.

ii. Parties' Addresses

Enter the address of the parties at the time of filing of the action. If any party is a corporation, enter the address of the registered office of the corporation.

iii. Number of Plaintiffs/Defendants

Indicate the total number of plaintiffs and the total number of defendants in the action. Of course, additional parties may be named later as a result of joinder or otherwise.

B. Amount in Controversy

Check the appropriate box. Indicate whether an Assessment of Damages Hearing is required.

C. Commencement of Action

Indicate type of document filed to initiate the action.

D. Other

Indicate whether the case is an arbitration, jury or non-jury case. Check any other appropriate boxes. If the action will require the entry of an Order approving a minor/incapacitated person's compromise, wrongful death or survival action, check the appropriate box.

E. Track Assignment—Court has final approval for all track assignments.

If you are requesting the Complex track, please indicate the reasons for your request.

F. Type of Action—Case Specific

Select and insert the applicable case type and code from the first two columns of the following list:

Code	Case Type	Code	Case Type	Code	Case Specific	Code	Case Specific
O	Adoption	9	Mandamus	020	Airplane/Aviation	007	Motor Veh. Accdt. >\$25,000
X	Assessment Appeal	M	Mental Health	001	Assault/Battery	037	Motor Veh. Accdt. <\$25,000
8	Aud./Fin. Reports	#	Miscellaneous	018	Class Action	009	Negotiable Instrument
A	Civil Action	F	Mortgage Foreclosure	015	Consumer Credit	002	Premises Liability
C	Custody	S	Municipal Appeal	019	Contract—Construction	027	Product Liability
1	Declaratory Judgment	7	Name Change	011	Contract—Sale of Goods	006	Property Damage (non-veh)
B	District Justice Appeal	%	Non-Profit Corporation	012	Contract—Other	013	Rent/Lease/Ejectment
D	Divorce	!	Tax Sale	030	Employment/Wrongful Disc.	039	Right to Know
W	Ejectment	PA	Partition	016	Fraud	024	Stockholder Suit
N	Eminent Dom./Dec. of Tak.	P	Protection from Abuse	025	Defamation	014	Title to Real Property
2	Eminent Domain/Pet. Viewers	R	Replevin	040	Indirect Criminal Contempt	023	Toxic Tort—Pers. Injury
E	Equity	Z	Termination—Involuntary	008	Insurance-Declar. Judgment	031	Toxic Waste/Environ.
H	Decedent's Estate	K	Termination—Voluntary	034	Malicious Prosecution		
G	Guardian/Minor	Q	Quiet Title	022	Malpractice		
I	Incapacity	V	Zoning Appeal	033	Mechanic's Lien		
L	License Suspension Appeal						

G. Code

Insert applicable code(s) from the above list.

H. Statutory Basis for Cause of Action

If the action is commenced pursuant to statutory authority ("Petition Action"), the specific statute must be cited.

I. Related Pending Cases

All previously filed related cases must be identified. Indicated whether they have been consolidated by Court Order or Stipulation.

J. Plaintiff's/Appellant's/Petitioner's Attorney—Entry of Appearance

The name of filing party's attorney must be inserted, together with the other required information. Unrepresented filers must provide their name, address, telephone number and signature.

[Pa.B. Doc. No. 02-1730. Filed for public inspection October 4, 2002, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Portable Fuel Containers

The Environmental Quality Board (Board) by this order establishes Chapter 130 (relating to standards for products) to read as set forth in Annex A.

Subchapter A (relating to portable fuel containers) applies to persons who sell, supply, offer for sale or manufacture for sale in this Commonwealth portable fuel containers or spouts, or both, and portable fuel containers and spouts, for use in this Commonwealth. Subchapter A also adds definitions for terms used in the substantive provisions of the chapter.

This notice is given under Board order at its meeting of July 16, 2002.

A. *Effective Date*

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

B. *Contact Persons*

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

C. *Statutory Authority*

This final-form rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005), which grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background*

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The United States Environmental Protection Agency (EPA) has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activity that involves physical exertion. Though these symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of this final-form rulemaking is to reduce the volatile organic compounds (VOCs) emitted from portable fuel containers. This final-form rulemaking is part of the Commonwealth's specific action plan to

achieve and maintain the ozone National Ambient Air Quality Standard in this Commonwealth.

A number of northeastern states have also committed to developing regulations designed to reduce the amount of VOCs emitted into the environment from portable fuel containers. It is anticipated that once these states, together with California, have adopted these regulations, they will have the effect of being a "de facto" National rule.

In addition to reducing VOC emissions, the final-form rulemaking will also reduce public exposure to hazardous constituents present in gasoline such as benzene. Benzene is a toxic air contaminant and a known human carcinogen. Although the risk reductions have not been quantified, it is assumed that the spill-proof features and permeation requirement would significantly reduce benzene emissions.

This final-form rulemaking would also improve water quality in aquifers, lakes and rivers. It would greatly reduce the amount of gasoline spilled onto the ground while refueling lawn, garden and small construction equipment and other machines with small gasoline engines. Many marine pleasure craft, especially personal watercraft, are refueled using portable containers, and the threat of fuel spillage during onwater refueling is always present. The spill-proof systems would allow users of pleasure craft to refuel their engines without fuel spillage; this would eliminate the potential discharge of fuel into the aquatic environment from these activities.

This final-form rulemaking applies to all portable fuel containers or spouts, or both, except: containers with capacity of less than or equal to 1 quart; rapid refueling devices with capacities equal to or greater than 4 gallons, provided they are designed for use in officially sanctioned off-road motorcycle competitions; and safety cans and portable marine fuel tanks that operate in conjunction with outboard motors.

Portable fuel containers or spouts, or both, must be equipped with an automatic shut-off device that stops fuel flow before the fuel tank overflows and an automatic device that closes and seals when it is removed from the fuel tank. There are also other required design specifications, all of which are intended to significantly lessen the possibility of gasoline spillage and reduce emissions.

Compliance with the performance standards is designed to maximize VOC emission reductions. It is estimated that VOCs would be reduced by approximately 75% of total uncontrolled emissions from this sector when the rulemaking is finalized.

The major implementation issues are consumer acceptance and the long life of these containers. These containers will look and operate somewhat differently than those currently on the market. However, based on experiences to date, manufacturers have indicated that consumers prefer the new product after becoming familiar with it. The Commonwealth, through the Ozone Transport Commission (OTC), has worked with manufacturers of these containers, and manufacturers have indicated that they would be able to provide the products to the market by 2003.

The Department of Environmental Protection (Department) worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this final-form rulemaking. At its May 2, 2002, meeting, AQTAC recom-

mended adoption of the final-form rulemaking. AQTC also recommended that the Department continue aggressive efforts with other states to support National standards for these products. The Small Business Compliance Advisory Committee questioned whether or not the provisions are consistent with State Fire Marshal requirements. Prior to proposed rulemaking, a cross-reference was inserted in § 130.101 (relating to applicability) to Fire Marshal requirements.

E. Summary of Comments and Responses on the Proposed Rulemaking

The Board received four sets of comments on the proposed rulemaking published at 31 Pa.B. 6185 (November 10, 2001). Following is a summary of the major issues and the Board's responses.

One commentator supported the proposed rulemaking because it will reduce emissions of VOCs and carcinogenic compounds such as benzene. The Board appreciates the support of this commentator. In addition to reducing emissions of VOCs and carcinogenic compounds into the air, the final-form rulemaking will also reduce potential soil, groundwater and surface water contamination by reducing gasoline spillage during fueling.

One commentator recommended that the Board modify the rulemaking to specify a fill range between 1.75 inches and 1.25 inches below the top of the target tank opening. The Board disagrees. Changing the requirement as proposed by the commentator may lead to an increase in refueling events caused by under-filled equipment fuel tanks. This may lead to consumer dissatisfaction with the new portable fuel containers that could result in product tampering.

One commentator expressed concern about the exemptions contained in § 130.104(d) and (e) (relating to exemptions) of the proposed rulemaking. Section 130.104(d) applies to rapid refueling devices used in sanctioned off-highway motorcycle competitions, and § 130.104(e) exempts portable fuel tanks used for outdoor motors on watercraft. The commentator believed that these exemptions should be eliminated if they would result in significant improvements in public health. The Board disagrees. The Board does not believe that the exemptions contained in the final-form rulemaking will result in significant emissions above the level that would be achieved if the tanks were not exempted.

One commentator believed pre-2003 containers should be labeled to advise consumers that the containers do not meet current requirements for future portable fuel containers. The Board does not agree. The labeling would add an additional level of regulation that would provide limited benefits. Informed consumers will be able to make the choice based upon the documentation associated with the new containers.

One commentator indicated that the innovative product exemption should be met through averaging rather than through the highest emitting product. The Board disagrees. Requiring an innovative product to achieve a higher level of control than that required for a complying product would stifle ingenuity and would discourage manufacturers from finding alternative compliance methods.

One commentator indicated that § 130.103(a)(2) (relating to performance standards for portable fuel containers and spill-proof spouts) should be revised to allow the use of spouts that "automatically close and remain completely closed when not dispensing fuel." The commentator indicated that allowing this alternative will minimize tamper-

ing to make complying spouts easier to use. The Board disagrees. Fill spouts that do not automatically stop the flow of fuel and seal when removed from the tank will not reduce spillage and overflowing, which are two of the major sources of emissions the regulation addresses.

One commentator recommended that certain changes be made to the California test methods, which are incorporated by reference in the rulemaking. The Board disagrees. Because the test methods and the standards are closely related, changes to the test method could significantly impact the standard and the emission reduction that will be achieved.

One commentator recommended that § 130.103(a)(3) be revised to require that a portable fuel container have only one opening for both pouring and venting with a second opening for filling. The Board disagrees. Allowing multiple openings in the container may result in significant evaporative loss of fuel from the containers. If a manufacturer can demonstrate that a different design or container configuration is suitable, the manufacturer may request an innovative product exemption under § 130.105 (relating to innovative products).

Another commentator suggested the addition of terms and definitions in § 130.102 (relating to definitions) for clarity to make the rulemaking consistent with CARB. The terms suggested are "consumer," "distributor," "retailer," "retail outlet," "manufacturer" and "VOC." The Board agrees that certain definitions are required. Definitions for all terms except "fuel" and "VOC" have been added to § 130.102. "VOC" is already defined in § 121.1 (relating to definitions), and a clarification has been added to the applicability section as to the relevant fuel types under this rulemaking.

One commentator pointed out that § 130.105 requires an applicant for innovative product exemption to apply in writing. However, the proposed rulemaking does not include a time frame under which the Department will review and act upon the application. The Board agrees and has included a 90-day deadline in the final-form rulemaking.

F. Summary of Regulatory Requirements

Final-form Chapter 130 includes definitions of terms and substantive provisions as well. The definitions in § 130.102 (relating to definitions) include "ASTM," "nominal capacity," "outboard engine," "permeation," "portable fuel container," "product category," "spill-proof spout," "spill-proof system," "spout" and "target fuel tank." Additional definitions added at final-form rulemaking include "consumer," "distributor," "manufacturer," "retailer" and "retail outlet."

The substantive provisions of Chapter 130 include § 130.101 requirements and a cross reference to Department of Labor and Industry (L & I) requirements related to portable fuel containers. Moreover, a clarification was made at final-form rulemaking that the subpart applies to liquid flammable and combustible fuels having a flash point below 200°F. Section 130.103 includes automatic shut-off spouts that stop fuel flow before the tank overflows. Section 130.104 provides exemptions for portable fuel containers and spouts manufactured for sale and use outside of this Commonwealth. Innovative products exemptions are provided for in § 130.105 to encourage the design and manufacture of products that will result in cumulative VOC emissions below those types of containers currently in the market. Additionally, new language was added at final-form rulemaking that under this section, the Department will render a decision on an

exemption application within 90 days of receipt of application. Section 130.106 (relating to administrative requirements) provides for recordkeeping and labeling. Under § 130.107 (relating to variances), a person or manufacturer that cannot comply with Chapter 130 due to extraordinary circumstances beyond that person's reasonable control may request a variance. Test procedures to determine if performance standards for portable fuel containers and spouts have been met are specified in § 130.108 (relating to test procedures). Revisions in § 130.108 indicate a September 13, 2000, administrative amendment to the Consumer Confidence Report correcting section numbers for the test methods.

In addition to the Department's statutory authority to regulate portable fuel containers as an air contamination source under the APCA, L & I has concurrent authority to regulate portable fuel containers used for storage of flammable or combustible liquids under the Combustible and Flammable Liquids Act (35 P. S. §§ 1241—1252). The Department has consulted with L & I regarding this rulemaking, and both departments concluded that the final-form rulemaking does not conflict with L & I's statutory authority or promulgated regulations.

The final-form rulemaking will be submitted to the EPA as an amendment to the State Implementation Plan.

G. Benefits and Costs

Executive Order 1996-1, "Regulatory Review and Promulgation" requires a cost/benefit analysis of the final-form rulemaking.

Benefits

Overall, the citizens of this Commonwealth will benefit from the final-form rulemaking because it will result in improved air quality by reducing ozone precursor emissions and encourage new technologies and practices, which reduce emissions. Moreover, it is also anticipated that adoption of this rulemaking will save consumers money because it will result in reduced evaporative loss and spillage of gasoline.

Compliance Costs

Manufacturers indicate that the requirements may add an additional \$6 to \$10 to the cost of containers. The cost to residents of this Commonwealth is estimated to be approximately \$3.3 million annually with an estimated VOC emission reduction to be approximately 5,700 tons per year. If the value of the emission reductions of gasoline saved is factored in, the net cost to citizens of this Commonwealth will be reduced to be approximately \$500,000.

Compliance Assistance Plan

The Department will continue to work with the other states in the northeast, with the OTC and with the National product manufacturers to ensure their understanding of the requirements. In addition, the Department is exploring opportunities for partnering with organizations to facilitate the transition to the new products.

Paperwork Requirements

The final-form rulemaking will not increase the paperwork that is already generated during the normal course of business operations.

H. Sunset Review

The final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the

Department to determine whether it effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 26, 2001, the Department submitted a copy of the notice of proposed rulemaking published at 31 Pa.B. 6185, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on August 13, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 22, 2002, and approved the final-form rulemaking.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

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

(3) These regulations do not enlarge the purpose of the proposal published at 31 Pa.B. 6185.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

(5) These regulations are necessary for the Commonwealth to achieve and maintain ambient air quality standards.

K. Order

The Board, acting under the authorizing statutes, order that:

(a) The regulations of the Department, 25 Pa. Code, are amended by adding §§ 130.101—130.108 to read as set forth in Annex A.

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the 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.

DAVID E. HESS,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 4405 (September 7, 2002).)

Fiscal Note: Fiscal Note 7-369 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 130. STANDARDS FOR PRODUCTS

Subchapter A. PORTABLE FUEL CONTAINERS

Sec.	
130.101.	Applicability.
130.102.	Definitions.
130.103.	Performance standards for portable fuel containers and spill-proof spouts.
130.104.	Exemptions.
130.105.	Innovative products.
130.106.	Administrative requirements.
130.107.	Variances.
130.108.	Test procedures.

§ 130.101. Applicability.

Except as provided in § 130.104 (relating to exemptions), this chapter applies to a person who sells, supplies, offers for sale, or manufactures for sale in this Commonwealth portable fuel containers or spouts or both portable fuel containers and spouts for use in this Commonwealth. This chapter applies to liquid flammable and combustible fuels having a flash point below 200°F. For additional requirements, see section 7(c) of the Combustible and Flammable Liquids Act (35 P.S. § 1247(c)) and 37 Pa. Code § 11.7 (relating to container construction).

§ 130.102. Definitions.

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

ASTM—The American Society for Testing and Materials.

Consumer—A person who purchases or otherwise acquires a new portable fuel container or spout or both portable fuel container and spout for personal, family, household or institutional use. A person acquiring a portable fuel container or spout or both portable fuel container and spout for resale is not a consumer for that product.

Distributor—A person to whom a portable fuel container or spout or both portable fuel container and spout is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers and consumers.

Manufacturer—A person who imports, manufactures, assembles, produces, packages, repackages, or relabels a portable fuel container or spout or both portable fuel container and spout.

Nominal capacity—The volume indicated by the manufacturer that represents the maximum recommended filling level.

Outboard engine—A spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

Permeation—The process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

Portable fuel container—A container or vessel with a nominal capacity of 10 gallons or less intended for reuse that is designed or used primarily for receiving, transporting, storing and dispensing fuel.

Product category—The applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate and permeation rate, as applicable, as determined by the Commonwealth.

Retailer—A person who owns, leases, operates, controls or supervises a retail outlet.

Retail outlet—An establishment at which portable fuel containers or spouts or both portable fuel containers and spouts are sold, supplied or offered for sale.

Spill-proof spout—A spout that complies with the performance standards specified in § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts).

Spill-proof system—A configuration of portable fuel container and firmly attached spout that complies with the performance standards in § 130.103(a).

Spout—A device that can be firmly attached to a portable fuel container for conducting pouring through which the contents of a portable fuel container can be dispensed.

Target fuel tank—A receptacle that receives fuel from a portable fuel container.

§ 130.103. Performance standards for portable fuel containers and spill-proof spouts.

(a) Except as provided in § 130.104 (relating to exemptions), a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a portable fuel container or spout, or a portable fuel container and spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof systems:

(1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

(2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

(3) Has only one opening for both filling and pouring.

(4) Provides a fuel flow rate and fill level of one of the following:

(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of:

(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.

(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on an accompanying package.

(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5

gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.

(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

(5) Does not exceed a permeation rate of 0.4 grams per gallon per day.

(6) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.

(b) Except as provided in § 130.104, a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth on or after January 1, 2003, a spout which, at the time of sale or manufacture, does not meet the following performance standards for spill-proof spouts:

(1) Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.

(2) Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

(3) Provides a fuel flow rate and fill level of one of the following:

(i) At least 1/2 gallon per minute for portable fuel containers with a nominal capacity of one of the following:

(A) Less than or equal to 1.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening.

(B) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1 inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on an accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

(ii) At least 1 gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening.

(iii) At least 2 gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

(4) Is warranted by the manufacturer for at least 1 year against defects in materials and workmanship.

(c) The test procedures for determining compliance with the performance standards in this section are set forth in § 130.108 (relating to test procedures). The manufacturer of portable fuel containers or spouts or both portable fuel containers and spouts shall perform the tests for determining compliance as set forth in § 130.108 to show that its product meets the performance standards of this section prior to allowing the product to be offered for sale in this Commonwealth. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale in this Commonwealth and make those test results available to the Department within 60 days of request.

(d) Notwithstanding subsections (a) and (b), a portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003, may be sold, supplied or offered for sale until January 1, 2004, if the

date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

§ 130.104. Exemptions.

(a) This subchapter does not apply to a portable fuel container or spout or both portable fuel container and spout manufactured in this Commonwealth for shipment, sale and use outside of this Commonwealth.

(b) This subchapter does not apply to a manufacturer or distributor who sells, supplies or offers for sale in this Commonwealth a portable fuel container or spout or both portable fuel container and spout that does not comply with the performance standards specified in § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts), if the manufacturer or distributor can demonstrate the following:

(1) The portable fuel container or spout or both portable fuel container and spout is intended for shipment and use outside of this Commonwealth.

(2) The manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout or both portable fuel container and spout is not distributed in this Commonwealth.

(c) This subchapter does not apply to portable fuel containers with a nominal capacity less than or equal to 1 quart.

(d) This subchapter does not apply to rapid refueling devices, with nominal capacities greater than or equal to 4 gallons, provided the devices are designed for use in officially sanctioned off-highway motorcycle competitions, or either create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

(e) This subchapter does not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

§ 130.105. Innovative products.

The Department may exempt a portable fuel container or spout or both portable fuel container and spout from one or more of the requirements of § 130.103 (relating to performance standards for portable fuel containers and spill-proof spouts) if a manufacturer demonstrates to the satisfaction of the Department that, due to the product's design, delivery system or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its product category as determined from applicable testing.

(1) An applicant shall apply in writing to the Commonwealth for an innovative product exemption claimed under this section. The application shall include the supporting documentation that quantifies the emissions from the innovative product, including the actual physical test methods used to generate the data. In addition, the applicant shall provide information necessary to enable the Department to establish enforceable conditions for granting the exemption.

(2) For a portable fuel container or spout or both portable fuel container and spout for which an innovative product exemption has been granted under this section, the applicant shall notify the Department in writing at least 30 days before the applicant changes a product's design, delivery system or other factors that may effect

the VOC emissions during recommended usage. The applicant shall also notify the Department within 30 days after the applicant learns of information that would alter the emissions estimates submitted to the Department in support of the exemption application.

(3) If the performance standards specified in § 130.103 are amended for a product category, all innovative product exemptions granted for products in the product category, except as provided in this section, have no force and effect as of the effective date of the amended performance standards.

(4) If the Department believes that a portable fuel container or spout or both portable fuel container and spout for which an exemption has been granted no longer meets the criteria for an innovative product specified in this section, the Department may revoke or modify the exemption.

(5) The Department will advise the applicant in writing of the Department's decision on the application for an innovative product exemption within 90 days of receipt of a complete application.

§ 130.106. Administrative requirements.

(a) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103(a) (relating to performance standards for portable fuel containers and spill-proof spouts) shall clearly display the following on each spill-proof system:

- (1) The phrase "Spill-Proof System."
- (2) A date of manufacture or representative date.

(3) A representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with § 130.103(a).

(b) Each manufacturer of a spout subject to and complying with § 130.103(b) shall clearly display the following on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

- (1) The phrase "Spill-Proof Spout."
- (2) A date of manufacture or representative date.

(3) A representative code identifying the spout as subject to and complying with § 130.103(b).

(c) Each manufacturer subject to subsection (a) or (b) shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on an accompanying package.

(d) Each manufacturer of a spout subject to subsection (b) shall clearly display the make, model number and size of only those portable fuel containers the spout is designed to accommodate and can demonstrate compliance with § 130.103(a) on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout, or a label affixed thereto.

(e) Each manufacturer of a portable fuel container or spout or both portable fuel container and spout subject to and complying with § 130.103 that, due to its design or other features cannot be used to refuel one or more on-road motor vehicles, shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater.

§ 130.107. Variances.

(a) A person or manufacturer who cannot comply with § 130.103 (relating to performance standards for portable

fuel containers and spill-proof spouts), due to extraordinary reasons beyond the person's reasonable control, may apply in writing to the Department for a variance. The variance application shall include the following:

(1) The specific grounds upon which the variance is sought.

(2) The proposed dates by which compliance with § 130.103 will be achieved.

(3) A compliance report detailing the methods by which compliance will be achieved.

(b) A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with a term or condition of the variance.

(c) Upon the application of a person, the Department may review and modify or revoke a variance from § 130.103.

§ 130.108. Test procedures.

(a) Testing to determine compliance with § 130.103(b) (relating to performance standards for portable fuel containers and spill-proof spouts) shall be performed by using the following test procedures:

(1) "Test Method 510, Automatic Shut-Off Test Procedure For Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.

(2) "Test Method 511, Automatic Closure Test Procedure For Spill-Proof Systems And Spill-Proof Spouts," adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.

(3) "Test Method 512, Determination Of Fuel Flow Rate For Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.

(b) Testing to determine compliance with § 130.103(a) shall be performed by using all test procedures in subsection (a) and "Test Method 513, Determination Of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000 (section numbers corrected September 13, 2000), which is incorporated by reference herein.

[Pa.B. Doc. No. 02-1731. Filed for public inspection October 4, 2002, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Consumer Products

The Environmental Quality Board (Board) by this order establishes Subchapter B (relating to consumer products) in Chapter 130 (relating to standards for products) to read as set forth in Annex A.

Section 130.202 (relating to definitions) adds definitions for terms that are used in the substantive sections of Chapter 130. Section 130.201 (relating to applicability) applies to any person who sells, supplies, offers for sale or manufactures consumer products for use in this Commonwealth. Sections 130.211—130.465 establish, among other things, standards and exemptions for these consumer

products. Section 130.471 (relating to public hearings) establishes public hearing requirements.

This notice is given under Board order at its meeting of July 16, 2002.

A. Effective Date

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

B. Contact Persons

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-9495; or Bo Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. Statutory Authority

The final-form rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005), which grants the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. Background and Purpose

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The United States Environmental Protection Agency (EPA) has concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments such as asthma. Further, although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in an activity that involves physical exertion. Though symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of additional measures to address the ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

The purpose of the final-form rulemaking is to reduce the volatile organic compounds (VOCs) emitted from consumer products. The final-form rulemaking is part of the Commonwealth's strategy to achieve and maintain the ozone standard throughout this Commonwealth. The final-form rulemaking expands upon the Federal consumer products rule, which became effective in December 1998. The Federal rule regulates 24 product categories representing 48% of the consumer products inventory Nationally and reduces VOC emissions from that inventory by 20%. To capture additional emission reductions from these products, the Commonwealth has developed this final-form rulemaking. The Commonwealth has used the California Air Resources Board (CARB) regulations and the Ozone Transport Commission (OTC) model rule and background material as a starting point and reviewed those documents, including specific emission reductions, for applicability in this Commonwealth. As a result, the final-form rulemaking includes most, if not all, of the product categories covered in California, with limits effective at a later date than California. To maximize consistency, emission limits for specific product categories are identical to those used in California.

The final-form rulemaking regulates 45 consumer product categories and approximately 80 different types of

products, and requires more stringent VOC content limits than the Federal rule. Some of the limits are currently in effect in California and are known to be technologically feasible. Other limits in California have future effective dates. The proposed compliance date for the Commonwealth limits is January 1, 2005. Manufacturers would ensure compliance with the limits by reformulating products and substituting products with compliant products that are already on the market.

Manufacturers producing consumer products would be responsible for developing and distributing compliant products for sale at the retail and wholesale levels. In addition, persons who sell, supply or offer for sale consumer products would also be held accountable. Consumers would not be affected by this final-form rulemaking in that they should not notice any changes in product performance or quality, and cost increases per consumer for these products will be negligible.

If compliance with the VOC contents becomes problematic, flexibility options are provided for in the final-form rulemaking. These options include an innovative product exemption, variances, exemptions and alternative control plans (ACP).

The final-form rulemaking contains requirements for charcoal lighter materials, aerosol adhesives, floor wax strippers and automotive windshield washer fluids, to name a few. They also contain administrative requirements for labeling and reporting. There is a reporting requirement so that manufacturers may be required to submit information to the Commonwealth upon request.

A CARB test method would be primarily used to demonstrate compliance. Enforcement of the product VOC content limits and other requirements would be done by the Commonwealth.

Because the Commonwealth, in conjunction with other northeastern states, has in the past met with representatives of the various National consumer product manufacturers in related industries, and have gathered their support for the final-form rulemaking, it is important that the final-form rulemaking be implemented consistently and uniformly as negotiated. Any deviation from the regulations may hinder the ability of manufacturers to comply with the requirements.

The Department of Environmental Protection (Department) worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of the final-form rulemaking. At its May 2, 2002, meeting, AQTAC recommended adoption of the final-form rulemaking. In addition, AQTAC recommended that the Department continue aggressive efforts with other states to support National standards for these products.

E. Summary of Comments and Responses on the Proposed Rulemaking

The Board received seven sets of comments on the proposed rulemaking. The following summarizes the major issues and the Board's responses.

A number of commentators support the rulemaking because it is consistent with the OTC model rule, which will assure consistency with those states that adopt the regulation. The Board agrees that it is important that the regulation be consistent with the OTC model rule and that this consistency will ensure the manufacturers' ability to manufacture and supply compliant products.

A number of commentators believe that the Board should correct the numerical table of standards to main-

tain consistency with the VOC limits in the OTC model rule. The Board agrees and has made the recommended changes.

A commentator supports the provisions in § 130.455 (relating to surplus reductions and surplus trading) that allows manufacturers the option of voluntarily entering into ACPs for products, but requests that the paragraph be revised to allow 15 days to submit information instead of 5 days. The Board agrees. The new paragraph has been added, which allows 15 days for the submission of information to the Department.

The commentator recommends that the Department revise portions in § 130.459(a)(2) (relating to notification of modifications to and ACP by the responsible ACP party) so that manufacturers are required only to submit general information about changes to product formulation. The Board disagrees. The provisions of the paragraph are intended to require that responsible ACP parties provide information on the product formulation and not on the product formula. It is not the intent to require responsible ACP parties to submit specific product formulation information.

The commentator urges the Board to revise the provisions of § 130.463 (relating to treatment of information) to assure protection of highly sensitive business information. The Board agrees. The provisions of the section, which has been renumbered as § 130.464, now specify that product formulation information can be protected as confidential business information under the provisions of section 13.2 of the APCA (35 P. S. § 4013.2).

The commentator requests that the definition of "adhesive" be revised to make it consistent with the California regulation. The Board agrees and has made the requested revision.

A commentator objects to the exemptions in § 130.335 (relating to air fresheners) for certain air fresheners and pesticides and believes that these exemptions should be deleted. The Board disagrees. The Board believes it is in the best interest of the Commonwealth to assure that the product VOC limits and exemptions in the final-form rulemaking are consistent with the OTC model rule.

The commentator suggests that § 130.371 (relating to code-dating) should require the manufacturer to display the actual date of the product manufacture and should not allow the use of "cod-dating" to signify the date of manufacture. The Board disagrees. The use of "code-dating" requirements different from those in the OTC model rule would result in considerable added expense for the manufacturers.

The commentator suggests that the availability of variances as provided for in §§ 130.411–130.414 should be severely curtailed or eliminated. The Board disagrees. The VOC limits in the final-form rulemaking are strongly technology forcing. It is prudent to provide an opportunity for manufacturers to seek relief if it becomes apparent that the product reformulation to meet the compliance limits is not possible.

This commentator further states that if the Department retains the provisions relating to variances that they should be limited for a period of not longer than 1 year. The Board disagrees. An application for a variance will specify the length of the time requested and, if the Department's evaluation indicates at that time it is excessive, then the Department will restrict the time period to an appropriate interval.

The commentator requests that the Board assure that there is an opportunity for public input before the

Department issues a final order granting a variance. The Board agrees. The final-form rulemaking contains § 130.471 that contains provisions specifying that a public hearing is to be held before the issuance, revocation or modification of a variance.

The commentator believes that provisions that allow manufacturers to obtain ACPs may result in lower emission reductions than anticipated, but will result in the continued exposure of consumers to hazardous air pollutants. The Board disagrees. For a manufacturer to obtain an ACP, significant reformulation of products must occur. In the aggregate, emissions from products covered by an ACP will not be any greater than emissions from the same group of products that had to be complied with individually.

One commentator notes that proposed §§ 130.412, 130.414, 130.461(b) (renumbered § 130.462(b)) and 130.463 (renumbered § 130.464) have open references to "Commonwealth laws and regulations." The Board should make specific references to pertinent statutes or regulations. The Board agrees. Section 130.471 has been added to specify requirements for hearings related to the issuance, modification or revocation/cancellation of variances and ACPs.

A commentator notes that § 130.371 establishes requirements for submitting product "date coding" information to the Department not less than 12 months before the effective date of the applicable standard. The commentator believes that a concrete effective date would be clearer. The Board agrees, and a specific date has been placed in that section.

A commentator believes that there should be procedures or time frames for public notice or inspection of variance applications by the public. The Board agrees. Section 130.411 (relating to application for variance) and § 130.471 establish appropriate procedures.

The commentator notes that the proposed rulemaking does not specify procedures to be used for an applicant for an alternative compliance plan. The Board has revised the regulation to set forth requirements related to the application for an ACP under § 130.454 (relating to application for an ACP).

F. Summary of Regulatory Requirements and Major Changes Between Proposed and Final-Form Rulemaking

Subchapter B includes the following definitions of terms that will be used in the substantive provisions of the final-form rulemaking. The definitions include: "ACP—Alternative Control Plan," "ACP agreement," "ACP emissions," "ACP limit," "ACP product," "ACP reformulation" or "ACP reformulated," "ACP standard," "ACP VOC standard," "ASTM," "adhesive," "adhesive remover," "aerosol adhesive," "aerosol cooking spray," "aerosol product," "agricultural use," "air freshener," "all other carbon-containing compounds," "all other forms," "antimicrobial hand or body cleaner or soap," "antiperspirant," "architectural coating," "astringent/toner," "automotive brake cleaner," "automotive hard paste wax," "automotive instant detailer," "automotive rubbing or polishing compound," "automotive wax, polish, sealant or glaze," "automotive windshield washer fluid," "bathroom and tile cleaner," "bug and tar remover," "carburetor or fuel-injection air intake cleaners," "carpet and upholstery cleaner," "charcoal lighter material," "colorant," "compliance period," "construction, panel and floor covering adhesive," "consumer," "consumer product," "contact adhesive," "container/packaging," "contact person," "crawling bug insecticide," "date-code," "deodorant," "device," "disinfectant,"

“distributor,” “double-phase aerosol air freshener,” “dry cleaning fluid,” “dusting aid,” “electronic cleaner,” “enforceable sales,” “enforceable sales record,” “engine degreaser,” “fabric protectant,” “facial cleaner or soap,” “fat wood,” “flea and tick insecticide,” “flexible flooring material,” “floor polish or wax,” “floor seam sealer,” “floor wax stripper,” “flying bug insecticide,” “fragrance,” “furniture maintenance product,” “furniture coating,” “gel,” “general purpose adhesive,” “general purpose cleaner,” “general purpose degreaser,” “general-use hand or body cleaner or soap,” “glass cleaner,” “gross Pennsylvania sales,” “HVO—high volatility organic compound,” “hair mousse,” “hair shine,” “hair styling gel,” “hair spray,” “heavy-duty hand cleaner or soap,” “herbicide,” “household product,” “insecticide,” “insecticide fogger,” “institutional product or industrial and institutional (I&I) product,” “lower vapor pressure (LVP) content,” “lower vapor pressure (LVP)-VOC,” “label,” “laundry prewash,” “laundry starch product,” “lawn and garden insecticide,” “liquid,” “lubricant,” “MVO—medium volatility organic compound,” “manufacturer,” “medicated astringent/medicated toner,” “metal polish/cleaner,” “missing data days,” “mist spray adhesive,” “multipurpose dry lubricant,” “multipurpose lubricant,” “multipurpose solvent,” “nail polish,” “nail polish remover,” “nonaerosol product,” “noncarbon containing compound,” “nonresilient flooring,” “nonselective terrestrial herbicide,” “one-product business,” “oven cleaner,” “paint,” “paint remover or stripper,” “penetrant,” “pesticide,” “Pennsylvania sales,” “plasticizer,” “pre-ACP VOC content,” “principal display panel or panels,” “product brand name,” “product category,” “product line,” “propellant,” “pump spray,” “reconcile” or “reconciliation,” “reconciliation” of shortfalls plan,” “responsible party,” “responsible ACP party,” “restricted materials,” “retailer,” “retail outlet,” “roll-on product,” “rubber and vinyl protectant,” “rubbing alcohol,” “sealant and caulking compound,” “semisolid,” “shaving cream,” “shortfall,” “silicone-based multipurpose lubricant,” “single-phase aerosol air freshener,” “solid,” “special purpose spray adhesive,” “spot remover,” “spray buff product,” “stick product,” “structural waterproof adhesive,” “surplus reduction,” “surplus trading,” “TMHE—total maximum historical emissions,” “Table B compound,” “terrestrial,” “tire sealant and inflation,” “Type A propellant,” “Type B propellant,” “Type C propellant,” “undercoating,” “usage directions,” “VOC content,” “wasp and hornet insecticide,” “waterproofing,” “wax,” “web spray adhesive,” “wood floor wax” and “working day.”

Section 130.211 (relating to table of standards) sets forth the percentage of VOC by weight, which cannot be exceeded for consumer products that are sold, supplied, offered for sale or manufactured for sale in this Commonwealth. Sections 130.212—130.216 contain other requirements that relate specifically to certain products like charcoal lighter materials, products registered under the Federal Insecticides, Fungicides and Rodenticides Act (FIFRA), aerosol adhesives and floor wax strippers. Sections 130.331—130.337 set forth the general exemption requirements for products for shipment and use outside of this Commonwealth and exemptions for specific consumer products like antiperspirants and deodorants, adhesives, insecticides, fungicides and rodenticides registered under FIFRA and air fresheners. Sections 130.351 and 130.352 (relating to innovative products exemption; and request for exemption) set forth exemptions for products that are considered innovative to advance and encourage new technologies. Section 130.371 and §§ 130.372 and 130.373 (relating to most restrictive limit; and additional labeling requirements for aerosol adhesives) set forth code-dating and additional labeling requirements for consumer products that are subject to this subsection. Sections 130.391

and 130.392 (relating to required reporting of information to the Department; and confidentiality) set forth general reporting requirements, special reporting requirements, reporting requirements for ozone depleting compounds and confidentiality requirements. Sections 130.411—130.414 set forth the procedures that a manufacturer may use to apply for and be granted a variance for certain products that would otherwise be subject to regulation. Additional requirements under § 130.411 were added at final-form rulemaking that set forth public hearing requirements for variance determinations. Section 130.431 (relating to testing for compliance) sets forth the test methods that will be used to ensure that the products are in compliance with this subchapter. Sections 130.451—130.465 set forth alternative methods of compliance for consumer products and administrative and other applicable requirements. In addition, more extensive ACP application requirements have been added to ensure that all applicants know what information is needed. Finally, § 130.471 was added.

The major changes that were made from proposed to final-form rulemaking include numerical changes in the table of standards under § 130.211; more detailed variance application requirements under § 130.411; § 130.454 that sets forth an application procedure for an ACP; treatment of information is more specific under § 130.464; and § 130.471 related to public hearing requirements has been added.

The final-form rulemaking will be submitted to the EPA as an amendment to the State Implementation Plan.

G. *Benefits and Costs*

Executive Order 1996-1, “Regulatory Review and Promulgation,” requires a cost/benefit analysis of the final-form rulemaking.

Benefits

Overall, the citizens of this Commonwealth will benefit from this final-form rulemaking because it will result in improved air quality by reducing ozone precursor emissions and encourage new technologies and practices, which will reduce emissions. The final-form rulemaking will also result in reduced levels of hazardous air pollutants throughout this Commonwealth. In addition, the final-form rulemaking will reduce citizen exposure to a variety of solvents, including hazardous air pollutants that are used in a variety of consumer products.

Compliance Costs

Under the final-form rulemaking, it is estimated that the reduction of VOC content of the affected consumer products will cost approximately \$800 per ton of emissions reduced based on annual emission reductions of approximately 6,000 tons or 1 pound per person. This equates to an estimated annual cost increase of \$4.8 million annually, or 30¢—40¢ per Commonwealth consumer.

Compliance Assistance Plan

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

Paperwork Requirements

The final-form rulemaking will not increase the paperwork that is already generated during the normal course of business operations.

H. *Sunset Review*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 26, 2001, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

In preparing this final-form rulemaking, 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.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on August 13, 2002, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(c) of the Regulatory Review Act, IRRC met on August 22, 2002, and approved the final-form rulemaking.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under section 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 regulations do not enlarge the purpose of the proposal published at 31 Pa.B. 6163 (November 10, 2001).

(4) This rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

(5) This rulemaking is necessary for the Commonwealth to achieve and maintain ambient air quality standards.

K. *Order*

The Board, acting under the authorizing statutes, order that:

(a) The regulations of the Department, 25 Pa. Code, are amended by adding §§ 130.201, 130.202, 130.211—130.216, 130.331—130.337, 130.351, 130.352, 130.371—130.373, 130.391, 130.392, 130.411—130.414, 130.431, 130.451—130.465 and 130.471 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.

DAVID E. HESS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 4405 (September 7, 2002).)

Fiscal Note: Fiscal Note 7-370 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 130. STANDARDS FOR PRODUCTS

Subchapter B. CONSUMER PRODUCTS

GENERAL PROVISIONS

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130.201.	Applicability.
130.202.	Definitions.

STANDARDS

130.211.	Table of standards.
130.212.	Products diluted prior to use.
130.213.	Products registered under FIFRA.
130.214.	Requirements for charcoal lighter materials.
130.215.	Requirements for aerosol adhesives.
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EXEMPTIONS

130.331.	Products for shipment and use outside this Commonwealth.
130.332.	Antiperspirants and deodorants.
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INNOVATIVE PRODUCTS

130.351.	Innovative products exemption.
130.352.	Request for exemption.

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130.371.	Code-dating.
130.372.	Most restrictive limit.
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REPORTING REQUIREMENTS

130.391.	Required reporting of information to the Department.
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VARIANCES

130.411.	Application for variance.
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130.413.	Termination of variance.
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TEST METHODS

130.431.	Testing for compliance.
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ACP FOR CONSUMER PRODUCTS

130.451.	Alternative methods of compliance.
130.452.	Exemption.
130.453.	Request for exemption.
130.454.	Application for an ACP.
130.455.	Recordkeeping and availability of requested information.
130.456.	Surplus reductions and surplus trading.
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130.458.	Reconciliation of shortfalls.
130.459.	Notification of modifications to an ACP by the responsible ACP party.

- 130.460. Modifications that require Department preapproval.
- 130.461. Other modifications.
- 130.462. Modification of an ACP by the Department.
- 130.463. Cancellation of an ACP.
- 130.464. Treatment of information.
- 130.465. Other applicable requirements.

PUBLIC HEARING REQUIREMENTS

- 130.471. Public hearings.

GENERAL PROVISIONS

§ 130.201. Applicability.

Except as provided in §§ 130.331—130.337 (relating to exemptions), this subchapter applies to a person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2005, for use in this Commonwealth.

§ 130.202. Definitions.

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

ACP—Alternative Control Plan—An emissions averaging program approved by the Department under this subchapter.

ACP agreement—The document signed by the Department which includes the conditions and requirements of the ACP, and which allows manufacturers to sell ACP products in this Commonwealth under the requirements of this subchapter.

ACP emissions—

(i) The sum of the VOC emissions from every ACP product subject to an ACP Agreement approving an ACP, during the compliance period specified in the ACP agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N \times (VOC\ Content) \times (Enforceable\ Sales)$$

$$Emissions = \frac{\hspace{15em}}{100}$$

where,

(ii) For all products except charcoal lighter material products:

$$VOC\ Content\ (Percent) = \frac{(B-C) \times 100}{A}$$

A = net weight of unit (excluding container and packaging)

B = total weight of all VOCs per unit, as defined in this section

C = total weight of all exempted VOCs per unit, as specified in this section

(iii) For charcoal lighter material products only:

$$VOC\ Content = \frac{(Certified\ Emissions \times 100)}{Certified\ Use\ Rate}$$

Certified Emissions = the emissions level for products approved by the Department under § 130.214 (relating to requirements for charcoal lighter materials), as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound CH₂ per start.

Certified Use Rate = the usage level for products approved by the Department under § 130.214, as deter-

mined under “South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991),” expressed to the nearest 0.001 pound certified product used per start.

ACP limit—The maximum allowable ACP Emissions during the compliance period specified in an ACP Agreement approving an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \dots + (Limit)_N$$

where,

$$Limit = \frac{(ACP\ Standard) \times (Enforceable\ Sales)}{100}$$

Enforceable Sales = the total amount of an ACP product sold for use in this Commonwealth, during the applicable compliance period specified in the ACP Agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding container and packaging).

ACP Standard = either the ACP product’s Pre-ACP VOC Content, or the applicable VOC standard specified in § 130.211 (relating table of standards), whichever is less.

Pre-ACP VOC Content = the lowest VOC content which the ACP product had between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the Commonwealth, based on either the data on the product obtained from the March 12, 1991, CARB Consumer Products Survey, or other accurate records available to the Department, whichever yields the lowest VOC content for the product (expressed as a percentage).

1, 2, . . . N = each product in an ACP up to the maximum N.

ACP product—A consumer product subject to the VOC standards specified in § 130.211, except those products that have been exempted under §§ 130.331—130.337 (relating to exemptions), or exempted as innovative products under §§ 130.351 and 130.352 (relating to innovative products).

ACP reformulation or ACP reformulated—The process of reducing the VOC content of an ACP product, within the period that an ACP is in effect, to a level which is less than the current VOC content of the product.

ACP standard—The Pre-ACP VOC content of an ACP product or the applicable VOC standard specified in § 130.211, whichever is less.

ACP VOC standard—The maximum allowable VOC content for an ACP product, determined as follows:

(i) The applicable VOC Standard specified in § 130.211, for all ACP products except for charcoal lighter material.

(ii) For charcoal lighter material products only, the VOC Standard for the purposes of this section shall be calculated according to the following equation:

$$VOC\ Standard = \frac{(0.020\ pound\ CH_2\ per\ start \times 100)}{Certified\ Use\ Rate}$$

where,

0.020 = the certification emissions level for the Department-approved product, as specified in § 130.214.

Certified Use Rate = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management Dis-

strict Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

ASTM—The American Society for Testing and Materials.

Adhesive—A product that is used to bond one surface to another by attachment.

(i) The term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or other products with an adhesive incorporated onto or in an inert substrate.

(ii) For contact adhesives, the term does not include aerosol adhesives or units of product, less packaging, which consist of more than 1 gallon.

(iii) For construction, panel and floor covering adhesive and general purpose adhesive, the term does not include aerosol adhesives or units of product which consist of more than 1 pound or 16 fluid ounces, less packaging.

Adhesive remover—A product designed exclusively for the removal of adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates.

Aerosol adhesive—An aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

Aerosol cooking spray—An aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

Aerosol product—A pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. The term does not include pump sprays.

Agricultural use—The use of a pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of an animal or plant crop. The term does not include the sale or use of pesticides in properly labeled packages or containers which are intended for the following uses:

(i) *Home use*. Use in a household or its immediate environment.

(ii) *Structural pest control*. A use requiring a license under the applicable State pesticide licensing requirement.

(iii) *Industrial use*. Use in a manufacturing, mining or chemical process or use in the operation of factories, processing plants and similar sites.

(iv) *Institutional use*. Use within the lines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums and office complexes.

Air freshener—A consumer product, including sprays, wicks, powders and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting or deodorizing the air.

(i) The term does not include:

- (A) Products that are used on the human body.
- (B) Products that function primarily as cleaning products.
- (C) Disinfectant products claiming to deodorize by killing germs on surfaces.

(D) Institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution.

(ii) The term includes spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution.

(iii) To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) does not constitute a claim of air freshening.

All other carbon-containing compounds—Compounds which contain at least one carbon atom and are not a "Table B" compound or a "LVP-VOC."

All other forms—Consumer product forms for which no form-specific VOC standard is specified in §§ 130.211—130.216 (relating to standards). Unless specified otherwise by the applicable VOC standard, the term includes solids, liquids, wicks, powders, crystals and cloth or paper wipes (towelettes).

Antimicrobial hand or body cleaner or soap—

(i) A cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity. The term includes the following:

- (A) Antimicrobial hand or body washes/cleaners.
- (B) Foodhandler hand washes.
- (C) Healthcare personnel hand washes.
- (D) Preoperative skin preparations.
- (E) Surgical scrubs.

(ii) The term does not include the following:

- (A) Prescription drug products.
- (B) Antiperspirants.
- (C) Astringent/toner.
- (D) Deodorant.
- (E) Facial cleaner or soap.
- (F) General-use hand or body cleaner or soap.
- (G) Hand dishwashing detergent, including antimicrobial.
- (H) Heavy-duty hand cleaner or soap.
- (I) Medicated astringent/medicated toner.
- (J) Rubbing alcohol.

Antiperspirant—A product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.

Architectural coating—A coating applied to stationary structures and their appurtenances, to mobile homes, to pavements or to curbs.

Astringent/toner—A product not regulated as a drug by the United States Food and Drug Administration (FDA) that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include:

- (i) Hand, face or body cleaner or soap products.
- (ii) Medicated astringent/medicated toner.
- (iii) Cold cream.
- (iv) Lotion.
- (v) Antiperspirant.

Automotive brake cleaner—A cleaning product designed to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

Automotive hard paste wax—An automotive wax or polish which is:

- (i) Designed to protect and improve the appearance of automotive paint surfaces.
- (ii) A solid at room temperature.
- (iii) 0% water by formulation.

Automotive instant detailer—A product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

Automotive rubbing or polishing compound—A product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

Automotive wax, polish, sealant or glaze—A product designed to seal out moisture, increase gloss or otherwise enhance a motor vehicle's painted surfaces.

- (i) The term includes products designed for:
 - (A) Use in autobody repair shops and drive-through car washes.
 - (B) Use by the general public.
- (ii) The term does not include:
 - (A) Automotive rubbing or polishing compounds.
 - (B) Automotive wash and wax products.
 - (C) Surfactant-containing car wash products.
 - (D) Products designed for use on unpainted surfaces such as bare metal, chrome, glass or plastic.

Automotive windshield washer fluid—A liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing or wetting the windshield. The term does not include fluids placed by the manufacturer in a new vehicle.

Bathroom and tile cleaner—A product designed to clean tile or surfaces in bathrooms. The term does not include products specifically designed to clean toilet bowls or toilet tanks.

Bug and tar remover—A product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

- (i) Biological-type residues such as insect carcasses and tree sap.
- (ii) Road grime, such as road tar, roadway paint markings and asphalt.

Carburetor or fuel-injection air intake cleaners—A product designed to remove fuel deposits, dirt or other contaminants from a carburetor, choke, throttle body of a fuel-injection system or associated linkages. The term does not include products designed exclusively to be

introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

Carpet and upholstery cleaner—A cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics.

(i) The term includes, but is not limited to, products that make fabric protectant claims.

(ii) The term does not include:

- (A) General purpose cleaners, spot removers, vinyl or leather cleaners or dry cleaning fluids.
- (B) Products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

Charcoal lighter material—A combustible material designed to be applied on, incorporated in, added to or used with charcoal to enhance ignition. The term does not include the following:

- (i) Electrical starters and probes.
- (ii) Metallic cylinders using paper tinder.
- (iii) Natural gas.
- (iv) Propane.
- (v) Fat wood.

Colorant—A pigment or coloring material used in a consumer product for an aesthetic effect, or to dramatize an ingredient.

Compliance period—The period of time, not to exceed 1 year, for which the ACP Limit and ACP Emissions are calculated and for which compliance with the ACP Limit is determined, as specified in the ACP agreement approving an ACP.

Construction, panel and floor covering adhesive—

(i) A one-component adhesive that is designed exclusively for the installation, remodeling, maintenance or repair of:

(A) Structural and building components that include, but are not limited to, the following:

- (I) Beams.
- (II) Trusses.
- (III) Studs
- (IV) Paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, predecorated hardboard or tileboard, and the like).
- (V) Ceiling and acoustical tile.

(VI) Molding, fixtures, countertops or countertop laminates, cove or wall bases and flooring or subflooring.

(B) Floor or wall coverings that include, but are not limited to, the following:

- (I) Wood or simulated wood covering.
- (II) Carpet, carpet pad or cushion, vinyl-backed carpet.
- (III) Flexible flooring material.
- (IV) Nonresilient flooring material.
- (V) Mirror tiles and other types of tiles.
- (VI) Artificial grass.

(ii) The term does not include floor seam sealer.

Consumer—A person who purchases or acquires a consumer product for personal, family, household or institutional use. Persons acquiring a consumer product for resale are not “consumers” for that product.

Consumer product—

(i) A chemically formulated product used by household and institutional consumers including:

- (A) Detergents.
- (B) Cleaning compounds.
- (C) Polishes.
- (D) Floor finishes.
- (E) Cosmetics.
- (F) Personal care products.
- (G) Home, lawn and garden products.
- (H) Disinfectants.
- (I) Sanitizers.
- (J) Aerosol paints.
- (K) Automotive specialty products.

(ii) The term does not include other paint products, furniture coatings or architectural coatings.

Contact adhesive—

(i) An adhesive that:

(A) Is designed for application to both surfaces to be bonded together.

(B) Is allowed to dry before the two surfaces are placed in contact with each other.

(C) Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other.

(D) Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

(ii) The term does not include rubber cements that are primarily intended for use on paper substrates.

Container/packaging—The parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. The term includes an article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

Contact person—A representative that has been designated by the responsible ACP party for the purpose of reporting or maintaining information specified in the ACP agreement.

Crawling bug insecticide—An insecticide product that is designed for use against ants, cockroaches or other household crawling arthropods, including mites, silverfish or spiders. The term does not include products designed to be used exclusively on humans or animals, or house dust mite product. For the purposes of this definition only:

(i) *House dust mite*. Mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum

Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata and the family Pyroglyphidae.

(ii) *House dust mite product*. A product whose label, packaging or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches or other household crawling arthropods.

Date-code—The day, month and year on which the consumer product was manufactured, filled or packaged, or a code indicating such a date.

Deodorant—A product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

Device—An instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling or mitigating a pest or other form of plant or animal life (other than man and other than bacteria, virus or other microorganism on or in living man or other living animals). The term does not include equipment used for the application of pesticides when sold separately.

Disinfectant—

(i) A product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y).

(ii) The term does not include the following:

(A) Products designed solely for use on humans or animals.

(B) Products designed for agricultural use.

(C) Products designed solely for use in swimming pools, therapeutic tubs or hot tubs.

(D) Products which, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners or metal polishes.

Distributor—A person to whom a consumer product is sold or supplied for the purposes of resale or distribution in commerce. The term does not include manufacturers, retailers and consumers.

Double-phase aerosol air freshener—An aerosol air freshener with the liquid contents in two or more distinct phases that requires the product container be shaken before use to mix the phases, producing an emulsion.

Dry cleaning fluid—

(i) A nonaqueous liquid product designed and labeled exclusively for use on:

(A) Fabrics which are labeled “for dry clean only,” such as clothing or drapery.

(B) “S-coded” fabrics.

(ii) The term includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer’s residence or work place.

(iii) The term does not include spot remover or carpet and upholstery cleaner.

(iv) For the purposes of this definition, S-coded fabric means an upholstery fabric designed to be cleaned only

with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee.

Dusting aid—A product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. The term does not include products that consist entirely of compressed gases for use in electronic or other specialty areas.

Electronic cleaner—A product designed specifically for the removal of dirt, grease or grime from electrical equipment such as electric motors, circuit boards, electricity panels and generators.

Enforceable sales—The total amount of an ACP product sold for use in this Commonwealth during the applicable compliance period specified in the ACP agreement, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

Enforceable sales record—A written, point-of-sale record or other Department-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in this Commonwealth during the applicable compliance period can be accurately documented. For the purposes of this subchapter, the term includes, but is not limited to, the following types of records:

- (i) Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period.
- (ii) Accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method which can be used to verify data comprising the summaries is submitted by the responsible ACP party and approved by the Department.
- (iii) Other accurate product sales records approved by the Department as meeting the criteria specified in this definition.

Engine degreaser—A cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

Fabric protectant—A product designed to be applied to fabric substrates to protect the surface from soiling by dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. The term does not include waterproofers, products designed for use solely on leather or products designed for use solely on fabrics which are labeled "dry clean only" and sold in containers of 10 fluid ounces or less.

Facial cleaner or soap—A cleaner or soap designed primarily to clean the face. The term includes, but is not limited to, facial cleansing creams, gels, liquids, lotions and substrate-impregnated forms. The term does not include:

- (i) Prescription drug products.
- (ii) Antimicrobial hand or body cleaner or soap.
- (iii) Astringent/toner.
- (iv) General-use hand or body cleaner or soap.
- (v) Medicated astringent/medicated toner.
- (vi) Rubbing alcohol.

Fat wood—Pieces of wood kindling with high naturally-occurring levels of sap or resin which enhance ignition of the kindling. The term does not include kindling with

substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

Flea and tick insecticide—An insecticide product that is designed for use against fleas, ticks, their larvae or their eggs. The term does not include products that are designed to be used exclusively on humans or animals and their bedding.

Flexible flooring material—Asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

Floor polish or wax—A wax, polish or other product designed to polish, protect or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. The term does not include:

- (i) Spray buff products.
- (ii) Products designed solely for the purpose of cleaning floors.
- (iii) Floor finish strippers.
- (iv) Products designed for unfinished wood floors.
- (v) Coatings subject to architectural coatings regulations in this chapter.

Floor seam sealer—A product designed and labeled exclusively for bonding, fusing or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

Floor wax stripper—A product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. The term does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

Flying bug insecticide—An insecticide product that is designed for use against flying insects or other flying arthropods, including mosquitoes, moths or gnats. The term does not include:

- (i) Wasp and hornet insecticide.
- (ii) Products that are designed to be used exclusively on humans or animals.
- (iii) A moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

Fragrance—A substance or complex mixture of aroma chemicals, natural essential oils and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

Furniture maintenance product—A wax, polish, conditioner or other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. The term does not include dusting aids, products designed solely for the purpose of cleaning and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

Furniture coating—A paint designed for application to room furnishings, including cabinets (kitchen, bath and vanity), tables, chairs, beds and sofas.

Gel—A colloid in which the dispersed phase has combined with the continuous phase to produce a semisolid material, such as jelly.

General purpose adhesive—A nonaerosol adhesive designed for use on a variety of substrates. The term does not include:

- (i) Contact adhesives.
- (ii) Construction, panel and floor covering adhesives.
- (iii) Adhesives designed exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers or vinyls).
- (iv) Adhesives designed exclusively for use on one specific category of articles (that is, articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping or carpets).

General purpose cleaner—A product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. The term includes products designed for general floor cleaning, kitchen or countertop cleaning and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

General purpose degreaser—

(i) A product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(ii) The term does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish/cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are:

- (A) Sold exclusively to establishments that manufacture or construct goods or commodities.
- (B) Labeled "not for retail sale."
- (iii) Solvent cleaning tanks or related equipment including, but is not limited to:
 - (A) Cold cleaners.
 - (B) Vapor degreasers.
 - (C) Conveyorized degreasers.
 - (D) Film cleaning machines.
 - (E) Products designed to clean miscellaneous metallic parts by immersion in a container.

General-use hand or body cleaner or soap—A cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils.

(i) The term includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels and moisturizing cleaners or soaps.

- (ii) The term does not include:
 - (A) Prescription drug products.
 - (B) Antimicrobial hand or body cleaner or soap.
 - (C) Astringent/toner.
 - (D) Facial cleaner or soap.
 - (E) Hand dishwashing detergent, including antimicrobial.
 - (F) Heavy-duty hand cleaner or soap.
 - (G) Medicated astringent/medicated toner.
 - (H) Rubbing alcohol.

Glass cleaner—A cleaning product designed primarily for cleaning surfaces made of glass. The term does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

Gross Pennsylvania sales—The estimated total sales in this Commonwealth of an ACP product during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the Department will provide an accurate Pennsylvania sales estimate:

(i) Apportionment of National or regional sales of the ACP product to Pennsylvania sales, determined by multiplying the average National or regional sales of the product by the fraction of the National or regional population, respectively, that is represented by this Commonwealth's current population.

(ii) Another documented method which provides an accurate estimate of the total current Pennsylvania sales of the ACP product.

HVOC—High volatility organic compound—A volatile organic compound that exerts a vapor pressure greater than 80 millimeters of Mercury (mm Hg) when measured at 20°C.

Hair mousse—A hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

Hair shine—A product designed for the primary purpose of creating a shine when applied to the hair. The term includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. The term does not include:

- (i) Hair spray.
- (ii) Hair mousse.
- (iii) Hair styling gel or spray gel.
- (iv) Products whose primary purpose is to condition or hold the hair.

Hair styling gel—A high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

Hair spray—A consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

Heavy-duty hand cleaner or soap—A product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt or adhesives from the hand with or without the use of water. The term does not include:

- (i) Prescription drug products.
- (ii) Antimicrobial hand or body cleaner or soap.
- (iii) Astringent/toner.
- (iv) Facial cleaner or soap.
- (v) General-use hand or body cleaner or soap.
- (vi) Medicated astringent/medicated toner.
- (vii) Rubbing alcohol.

Herbicide—A pesticide product designed to kill or retard a plant's growth, but excludes products that are:

- (i) For agricultural use.
- (ii) Restricted materials that require a permit for use and possession.

Household product—A consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

Insecticide—A pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

- (i) For agricultural use.
- (ii) For a use which requires a structural pest control license under applicable laws or regulations of the Commonwealth.
- (iii) Restricted materials that require a permit for use and possession.

Insecticide fogger—An insecticide product designed to release all or most of its content, as a fog or mist, into indoor areas during a single application.

Institutional product or industrial and institutional (I&I) product—

(i) A consumer product that is designed for use in the maintenance or operation of an establishment that:

- (A) Manufactures, transports or sells goods or commodities, or provides services for profit.
- (B) Is engaged in the nonprofit promotion of a particular public, educational or charitable cause.

(ii) Establishments include, but are not limited to, the following:

- (A) Government agencies.
- (B) Factories.
- (C) Schools.
- (D) Hospitals.
- (E) Sanitariums.
- (F) Prisons
- (G) Restaurants.
- (H) Hotels.
- (I) Stores.
- (J) Automobile service and parts centers.
- (K) Health clubs.
- (L) Theaters.
- (M) Transportation companies.

(iii) The term does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

Lower vapor pressure (LVP) content—The total weight, in pounds, of LVP compounds in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed as a percentage to the nearest 0.1.

Lower vapor pressure (LVP)-VOC—

- (i) A chemical compound or mixture that contains at least one carbon atom and meets one of the following:
 - (A) Has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by CARB Method 310.

(B) Is a chemical compound with more than 12 carbon atoms, or a chemical mixture comprised solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown.

(C) Is a chemical compound with a boiling point greater than 216°C, as determined by CARB Method 310.

(D) Is the weight percent of a chemical mixture that boils above 216°C, as determined by CARB Method 310.

(ii) For the purposes of this definition, chemical compound means a molecule of definite chemical formula and isomeric structure, and chemical mixture means a substance comprised of two or more chemical compounds.

Label—Written, printed or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on or appearing upon a consumer product or consumer product package, for purposes of branding, identifying or giving information with respect to the product or to the contents of the package.

Laundry prewash—A product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance, or both.

Laundry starch product—A product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and which may also act to help ease ironing of the fabric. The term includes, but is not limited to, fabric finish, sizing and starch.

Lawn and garden insecticide—An insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

Liquid—A substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM D-4359-90. The term does not include powders or other materials that are composed entirely of solid particles.

Lubricant—A product designed to reduce friction, heat, noise or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. The term does not include:

- (i) Automotive power steering fluids.
- (ii) Products for use inside power generating motors, engines and turbines, and their associated power-transfer gearboxes.
- (iii) Two cycle oils or other products designed to be added to fuels.
- (iv) Products for use on the human body or animals.
- (v) Products that are sold exclusively to establishments which manufacture or construct goods or commodities, and are labeled "not for retail sale."

MVOC—Medium volatility organic compound—A VOC that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20°C.

Manufacturer—A person who imports, manufactures, assembles, produces, packages, repackages or relabels a consumer product.

Medicated astringent/medicated toner—A product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores. The term includes, but is not limited to, clarifiers and substrate-impregnated products. The term does not include:

- (i) Hand, face or body cleaner or soap products.
- (ii) Astringent/toner.
- (iii) Cold cream.
- (iv) Lotion.
- (v) Antiperspirants.
- (vi) Products that must be purchased with a doctor's prescription.

Metal polish/cleanser—A product designed primarily to improve the appearance of finished metal, metallic or metallized surfaces by physical or chemical action by removing or reducing stains, impurities or oxidation from surfaces or by making surfaces smooth and shiny. The term includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. The term does not include:

- (i) Automotive wax, polish, sealant or glaze.
- (ii) Wheel cleaner.
- (iii) Paint remover or stripper.
- (iv) Products designed and labeled exclusively for automotive and marine detailing.
- (v) Products designed for use in degreasing tanks.

Missing data days—The number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data to the Department, as specified in the ACP agreement.

Mist spray adhesive—An aerosol which is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

Multipurpose dry lubricant—A lubricant which is:

- (i) Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide (moly) or polytetrafluoroethylene or closely related fluoropolymer (Teflon) on surfaces.
- (ii) Designed for general purpose lubrication or for use in a wide variety of applications.

Multipurpose lubricant—A lubricant designed for general purpose lubrication or for use in a wide variety of applications. The term does not include:

- (i) Multipurpose dry lubricants.
- (ii) Penetrants.
- (iii) Silicone-based multipurpose lubricants.

Multipurpose solvent—An organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials. The term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. The term does not include solvents used in:

- (i) Cold cleaners.
- (ii) Vapor degreasers.
- (iii) Conveyorized degreasers.
- (iv) Film cleaning machines.
- (v) Solvents that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

Nail polish—A clear or colored coating designed for application to the fingernails or toenails and including lacquers, enamels, acrylics, base coats and top coats.

Nail polish remover—A product designed to remove nail polish and coatings from fingernails or toenails.

Nonaerosol product—A consumer product that is not dispensed by a pressurized spray system.

Noncarbon containing compound—A compound that does not contain carbon atoms.

Nonresilient flooring—Flooring of a mineral content that is not flexible, including:

- (i) Terrazzo.
- (ii) Marble.
- (iii) Slate.
- (iv) Granite.
- (v) Brick.
- (vi) Stone.
- (vii) Ceramic tile.
- (viii) Concrete.

Nonselective terrestrial herbicide—A terrestrial herbicide product that is toxic to plants without regard to species.

One-product business—A responsible ACP party which sells, supplies, offers for sale or manufactures for use in this Commonwealth:

- (i) Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of §§ 130.211—130.216.
- (ii) Only one distinct ACP product line subject to the requirements of §§ 130.211—130.216, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

Oven cleaner—A cleaning product designed to clean and to remove dried food deposits from oven walls.

Paint—A pigmented liquid or liquefiable or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

Paint remover or stripper—A product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. The term does not include:

- (i) Multipurpose solvents.
- (ii) Paint brush cleaners.
- (iii) Products designed and labeled exclusively to remove graffiti.
- (iv) Hand cleaner products that claim to remove paints and other related coatings from skin.

Penetrant—A lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation or other causes. The term does not include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

Pesticide—A substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating a pest, or a substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant or plant regulator. The term does not include a substance, mixture of substances or device which the EPA does not consider to be a pesticide.

Pennsylvania sales—The sales (net pounds of product, less packaging and container, per year) in this Commonwealth for either the calendar year immediately prior to the year that the registration is due or, if that data is not available, a consecutive 12-month period commencing no earlier than 2 years prior to the due date of the registration. If direct sales data for this Commonwealth is not available, sales may be estimated by prorating National or regional sales data by population.

Plasticizer—A material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability or distensibility, and may be determined by using ASTM Method E260-91 or from product formulation data.

Pre-ACP VOC Content—The lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the Department based on either the data on the product obtained from the March 12, 1991, CARB Consumer Products Survey or other accurate records available to the Department, whichever yields the lowest VOC content for the product.

Principal display panel or panels—The parts of a label that is so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all of the principal display panels.

Product brand name—The name of the product exactly as it appears on the principal display panel of the product.

Product category—The applicable category that best describes the product as listed in this section.

Product line—A group of products of identical form and function belonging to the same product category.

Propellant—A liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

Pump spray—A packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.

Reconcile or reconciliation—Providing sufficient VOC emission reductions to completely offset shortfalls generated under the ACP during an applicable compliance period.

Reconciliation of shortfalls plan—The plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the Department under § 130.458 (relating to reconciliation of shortfalls).

Responsible party—The company, firm or establishment which is listed on the product's label. If the label lists two companies, firms or establishments, the responsible party is the party which the product was manufactured for or distributed by, as noted on the label.

Responsible ACP party—The company, firm or establishment which is listed on the ACP product's label. If the label lists two or more companies, firms or establishments, the responsible ACP party is the party which the ACP product was manufactured for or distributed by, as noted on the label.

Restricted materials—Pesticides established as restricted materials under applicable laws or regulations of the Commonwealth.

Retailer—A person who sells, supplies or offers consumer products for sale directly to consumers.

Retail outlet—An establishment at which consumer products are sold, supplied or offered for sale directly to consumers.

Roll-on product—An antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

Rubber and vinyl protectant—A product designed to protect, preserve or renew vinyl, rubber and plastic on vehicles, tires, luggage, furniture and household products such as vinyl covers, clothing and accessories. The term does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

Rubbing alcohol—A product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

Sealant and caulking compound—A product with adhesive properties that is designed to fill, seal, waterproof or weatherproof gaps or joints between two surfaces.

- (i) The term does not include:
 - (A) Roof cements and roof sealants.
 - (B) Insulating foams.
 - (C) Removable caulking compounds.
 - (D) Clear/paintable/water resistant caulking compounds.
 - (E) Floor seam sealers.
 - (F) Products designed exclusively for automotive uses.
 - (G) Sealers that are applied as continuous coatings.
- (ii) The term also does not include units of product, less packaging, which weigh more than 1 pound and consist of more than 16 fluid ounces.
- (iii) For the purposes of this definition only:
 - (A) "Removable caulking compounds" means a compound which temporarily seals windows or doors for 3 to 6 month time intervals.
 - (B) "Clear/paintable/water resistant caulking compounds" means a compound which contains no appreciable level of opaque fillers or pigments; transmits most or all visible light through the caulk when cured; is paintable; and is immediately resistant to precipitation upon application.

Semisolid—A product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes and greases.

Shaving cream—An aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair.

Shortfall—The ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. The term does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the Department.

Silicone-based multipurpose lubricant—

(i) A lubricant which is:

(A) Designed and labeled to provide lubricity primarily through the use of silicone compounds, including polydimethylsiloxane.

(B) Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

(ii) The term does not include products designed and labeled exclusively to release manufactured products from molds.

Single-phase aerosol air freshener—An aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

Solid—A substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90.

Special purpose spray adhesive—

(i) An aerosol adhesive that meets one or more of the following definitions:

(A) *Mounting adhesive*. An aerosol adhesive designed to permanently mount photographs, artwork and other drawn or printed media to a backing (paper, board, cloth, and the like) without causing discoloration to the artwork.

(B) *Flexible vinyl adhesive*. An aerosol adhesive designed to bond flexible vinyl to substrates. Flexible vinyl means a nonrigid polyvinyl chloride plastic with at least 5%, by weight, of plasticizer content.

(C) *Polystyrene foam adhesive*. An aerosol adhesive designed to bond polystyrene foam to substrates.

(D) *Automobile headliner adhesive*. An aerosol adhesive designed to bond together layers in motor vehicle headliners.

(E) *Polyolefin adhesive*. An aerosol adhesive designed to bond polyolefins to substrates.

(F) *Laminate repair/edgebanding adhesive*. An aerosol adhesive designed for:

(I) The touch-up or repair of items laminated with high pressure laminates (for example-lifted edges, delaminates, and the like).

(II) The touch-up, repair or attachment of edgebanding materials, including other laminates, synthetic marble, veneers, wood molding and decorative metals.

(G) *High pressure laminate*. Sheet materials which consist of paper, fabric or other core material that have been laminated at temperatures exceeding 265°F, and at pressures between 1,000 and 1,400 psi.

(H) *Automotive engine compartment adhesive*. An aerosol adhesive designed for use in motor vehicle under-the-

hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200—275°F.

Spot remover—A product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery and clothing, that does not require subsequent laundering to achieve stain removal. The term does not include:

- (i) Dry cleaning fluid.
- (ii) Laundry prewash.
- (iii) Carpet and upholstery cleaner.
- (iv) Multipurpose solvent.

Spray buff product—A product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

Stick product—An antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

Structural waterproof adhesive—An adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181 (Type 1, Grade A) and MIL-A-4605 (Type A, Grade A and Grade C). This definition is as per the Federal Consumer Products Regulation in 40 CFR 59 Subpart C.

Surplus reduction—The ACP limit minus the ACP emissions when the ACP Limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in § 130.457 (relating to limited-use surplus reduction credits for early reformulations of ACP products), the term does not include emissions occurring prior to the date that the ACP agreement is signed by the Department.

Surplus trading—The buying, selling or transfer of surplus reductions between responsible ACP parties.

TMHE—Total maximum historical emissions—The total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP has failed to provide the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$(TMHE = MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

where,

$$MHE = \left(\frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \right) \times \text{Missing Data Days}$$

Highest VOC Content = the maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for a portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC content data (for the entire compliance period), as specified in the ACP agreement expressed as a percentage.

Highest Sales = the maximum 1-year gross Pennsylvania sales of the ACP product in the previous 5 years, if

the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for a portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual 1-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

Missing Data = the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data as specified in the ACP agreement approving an ACP.

1, 2, . . . , N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required enforceable sales or VOC content data as specified in the ACP agreement approving an ACP.

Table B compound—A carbon-containing compound listed as an exception to the definition of VOC in section 94508 of the CCR.

Terrestrial—To live on or grow from land.

Tire sealant and inflation—A pressurized product that is designed to temporarily inflate and seal a leaking tire.

Type A propellant—A compressed gas such as CO₂, N₂, N₂O or compressed air which is used as a propellant, and is either incorporated with the product or contained in a separate chamber within the product's packaging.

Type B propellant—A halocarbon which is used as a propellant, including:

- (i) Chlorofluorocarbons (CFCs).
- (ii) Hydrochlorofluorocarbons (HCFCs).
- (iii) Hydrofluorocarbons (HFCs).

Type C propellant—A propellant which is not a Type A or Type B propellant, including propane, isobutane, n-butane and dimethyl ether (also known as dimethyl oxide).

Undercoating—An aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior or firewall of motor vehicles to prevent the formation of rust or to deaden sound. The term includes, but is not limited to, rubberized, mastic or asphaltic products.

Usage directions—The text or graphics on the product's principal display panel, label or accompanying literature that describes to the end user how and in what quantity the product is to be used.

VOC content—Except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined under § 130.431 (relating to testing for compliance).

For charcoal lighter material products only,

$$VOC\ Content = \frac{(Certified\ Emissions \times 100)}{Certified\ Use\ Rate}$$

Certified Emissions = the emissions level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound CH₂ per start.

Certified Use Rate = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

Wasp and hornet insecticide—An insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

Waterproof—A product designed and labeled exclusively to repel water from fabric or leather substrates. The term does not include fabric protectants.

Wax—A material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high molecular weight polymers (plastics). The term includes:

(i) Substances derived from the secretions of plants and animals such as caruba wax and beeswax.

(ii) Substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

Web spray adhesive—An aerosol adhesive which is not a mist spray or special purpose spray adhesive.

Wood floor wax—Wax-based products for use solely on wood floors.

Working day—A day from Monday through Friday, inclusive, except for days that are Federal or State holidays.

STANDARDS

§ 130.211. Table of standards.

Except as provided in §§ 130.331—130.337, 130.351, 130.352, 130.411—130.414 and 130.451—130.464, a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth a consumer product manufactured on or after January 1, 2005, which contains VOCs in excess of the limits specified in the following table of standards:

**Table of Standards
(percent VOC by weight)**

<i>Product Category</i>	<i>Effective Date</i> 1/1/2005
Adhesives	
Aerosol:	
Mist Spray	65
Web Spray	55
Special Purpose Spray Adhesives:	
Mounting, Automotive Engine	
Compartment, and Flexible Vinyl	70
Polystyrene Foam and Automotive	
Headliner	65
Polyolefin and Laminate Repair/ Edgebanding	60
Contact	80
Construction, Panel and Floor Covering	15
General Purpose	10
Structural Waterproof	15

<i>Product Category</i>	<i>Effective Date 1/1/2005</i>	<i>Product Category</i>	<i>Effective Date 1/1/2005</i>
Air Fresheners		Insecticides	
Single-Phase Aerosols	30	Crawling Bug (Aerosol)	15
Double-Phase Aerosols	25	Crawling Bug (all other forms)	20
Liquids/Pump Sprays	18	Flea and Tick	25
Solids/Gels	3	Flying Bug (Aerosol)	25
Antiperspirants		Flying Bug (all other forms)	35
Aerosol	40 HVOC 10 MVOC	Foggers	45
Nonaerosol	0 HVOC 0 MVOC	Lawn and Garden (all other forms)	20
Automotive Brake Cleaners	45	Lawn and Garden (Nonaerosol)	3
Automotive Rubbing or Polishing Compound	17	Wasp and Hornet	40
Automotive Wax, Polish, Sealant or Glaze		Laundry Prewash	
Hard Paste Waxes	45	Aerosols / Solids	22
Instant Detailers	3	All Other Forms	5
All Other Forms	15	Laundry Starch Products	5
Automotive Windshield Washer Fluids	35	Metal Polishes / Cleansers	30
Bathroom and Tile Cleaners		Multipurpose Lubricant (Excluding Solid or Semisolid Products)	50
Aerosols	7	Nail Polish Remover	75
All Other Forms	5	Nonselective Terrestrial Herbicide	
Bug and Tar Remover	40	Nonaerosols	3
Carburetor or Fuel-Injection Air Intake Cleaners	45	Oven Cleaners	
Carpet and Upholstery Cleaners		Aerosols / Pump Sprays	8
Aerosols	7	Liquids	5
Nonaerosols (Dilutables)	0.1	Paint Remover or Strippers	50
Nonaerosols (Ready-to-Use)	3.0	Penetrants	50
Charcoal Lighter Material	See § 130.214	Rubber and Vinyl Protectants	
Cooking Spray Aerosols	18	Nonaerosols	3
Deodorants		Aerosols	10
Aerosol	0 HVOC 10 MVOC	Sealants and Caulking Compounds	4
Nonaerosol	0 HVOC 0 MVOC	Shaving Creams	5
Dusting Aids		Silicone-Based Multipurpose Lubricants (Excluding Solid or Semisolid Products)	60
Aerosols	25	Spot Removers	
All Other Forms	7	Aerosols	25
Engine Degreasers		Nonaerosols	8
Aerosol	35	Tire Sealants and Inflatars	20
Nonaerosol	4	Undercoatings	
Fabric Protectants	60	Aerosols	40
Floor Polishes/Waxes			
Products for Flexible Flooring Materials	7		
Products for Nonresilient Flooring	10		
Wood Floor Wax	90		
Floor Wax Strippers			
Nonaerosol	See § 130.216		
Furniture Maintenance Products			
Aerosols	17		
All Other Forms Except Solid or Paste	7		
General Purpose Cleaners			
Aerosols	10		
Nonaerosols	4		
General Purpose Degreasers			
Aerosols	50		
Nonaerosols	4		
Glass Cleaners			
Aerosols	12		
Nonaerosols	4		
Hair Mousses	6		
Hairshines	55		
Hairsprays	55		
Hair Styling Gels	6		
Heavy-Duty Hand Cleaner or Soap	8		

§ 130.212. Products diluted prior to use.

(a) For consumer products for which the label, packaging or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in § 130.211 (relating to table of standards) apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, minimum recommended dilution does not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

(b) For consumer products for which the label, packaging or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in § 130.211 apply to the product only after the maximum recommended dilution has taken place.

§ 130.213. Products registered under FIFRA.

For those consumer products that are registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y), the effective date of the VOC standards specified in the Table of Standards is 1 year after the date specified in § 130.211 (relating to table of standards).

§ 130.214. Requirements for charcoal lighter materials.

The following requirements apply to charcoal lighter material products as defined in § 130.202 (relating to definitions).

(1) *Regulatory standards.* A person may not sell, supply or offer for sale after January 1, 2005, a charcoal lighter material product unless at the time of the transaction:

(i) The manufacturer can demonstrate that the manufacturer has been issued a currently effective certification by the CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, Section 94509(h), of Title 17 of the CCR. This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming a certification on this basis shall submit to the Department a copy of the certification decision (that is, the Executive Order), including all conditions established by CARB applicable to the certification.

(ii) The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification under paragraph (2).

(iii) The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable ACP agreement issued under paragraph (2).

(iv) The product usage directions for the charcoal lighter material are the same as those provided to the Commonwealth under paragraph (2)(iii).

(2) *Certification requirements.*

(i) A charcoal lighter material formulation will not be certified under this subsection unless the applicant for certification demonstrates to the Department's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (South Coast Air Quality Management District Rule 1174 Testing Protocol). The provisions relating to LVP-VOC in § 130.333 (relating to LVP-VOC) do not apply to a charcoal lighter material subject to the requirements of this section and § 130.211.

(ii) The Department may approve alternative test procedures which are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Test Protocol.

(iii) A manufacturer or distributor of charcoal lighter material may apply to the Department for certification of a charcoal lighter material formulation.

(3) *Notice of modifications.* For a charcoal lighter material for which certification has been granted the applicant for certification shall notify the Department in writing within 30 days of:

(i) A change in the usage directions.

(ii) A change in product formulation, test results or other information submitted under paragraph (2) which may result in VOC emissions greater than 0.020 pound of VOC per start.

(4) *Revocation of certification.* If the Department determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality

Management District Rule 1174 Testing Protocol and the statistical analysis procedures contained therein, the Department will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start.

§ 130.215. Requirements for aerosol adhesives.

(a) As specified in CCR Section 41712(h)(2), the standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial and commercial uses. Except as otherwise provided in §§ 130.331—130.337, 130.351 and 130.352 and 130.411—130.414, a person may not sell, supply, offer for sale, use or manufacture for sale in this Commonwealth an aerosol adhesive which, at the time of sale, use or manufacture, contains VOCs in excess of the specified standard.

(b) For a special purpose spray adhesive:

(1) To qualify as a special purpose spray adhesive, the product shall meet one or more of the definitions specified in § 130.202 (relating to definitions), but if the product label indicates that the product is suitable for use on a substrate or application not listed in § 130.202, the product will be classified as either a "web spray adhesive" or a "mist spray adhesive."

(2) If a product meets more than one of the definitions specified in § 130.202 for special purpose spray adhesive, and is not classified as a web spray adhesive or mist spray adhesive, the VOC limit for the product shall be the lowest applicable VOC limit specified in § 130.211 (relating to table of standards).

(c) Aerosol adhesives shall comply with the labeling requirements specified in § 130.373 (relating to additional labeling requirements for aerosol adhesives).

§ 130.216. Requirements for floor wax strippers.

A person may not sell, supply, offer for sale or manufacture for use in this Commonwealth a floor wax stripper unless the following requirements are met:

(1) The label of each nonaerosol floor wax stripper shall specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3% by weight or less.

(2) If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper shall specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.

EXEMPTIONS

§ 130.331. Products for shipment and use outside this Commonwealth.

(a) This subchapter does not apply to a consumer product manufactured in this Commonwealth for shipment and use outside of this Commonwealth.

(b) This subchapter does not apply to a manufacturer or distributor who sells, supplies or offers for sale in this Commonwealth a consumer product that does not comply with the VOC standards specified in § 130.211 (relating to table of standards), as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of this Commonwealth, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed in this Commonwealth.

§ 130.332. Antiperspirants and deodorants.

(a) The MVOC content standards in § 130.211 (relating to table of standards) for antiperspirants and deodorants do not apply to ethanol.

(b) The VOC limits specified in § 130.211 do not apply to fragrances up to a combined level of 2% by weight contained in a consumer product and do not apply to colorants up to a combined level of 2% by weight contained in an antiperspirant or deodorant.

(c) The requirements of § 130.211 for antiperspirants and deodorants do not apply to those VOCs that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20°C.

§ 130.333. LVP-VOC.

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to an LVP-VOC.

§ 130.334. Products registered under FIFRA.

The requirements of § 130.371 (relating to code-dating) do not apply to consumer products registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y).

§ 130.335. Air fresheners.

(a) The VOC limits specified in § 130.211 (relating to table of standards) do not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under § 130.202 (relating to definitions) or exempted under this section.

(b) The VOC limits specified in § 130.211 do not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

§ 130.336. Adhesives.

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to adhesives sold in containers of 1 fluid ounce or less.

§ 130.337. Bait station insecticides.

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to bait station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5% active ingredients.

INNOVATIVE PRODUCTS**§ 130.351. Innovative products exemption.**

A manufacturer of consumer products that has been granted an innovative products exemption by the CARB under the innovative products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5, Article 1, Section 94503.5 of Title 17 of the CCR shall be exempt from § 130.211 (relating to table of standards) for the period of time that the CARB innovative products exemption remains in effect provided that all consumer products within the CARB innovative products exemption are contained in § 130.211. A manufacturer claiming such an exemption on this basis shall submit to the Department a copy of the CARB innovative products exemption decision (that is, the Executive Order), including all conditions established by CARB applicable to the exemption.

§ 130.352. Request for exemption.

A manufacturer of consumer products that has been granted an innovative products exemption under the

innovative products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5, Article 1, Section 94503.5 of Title 17 of the CCR based on California-specific data, or that has not been granted an exemption by CARB may seek an innovative products exemption in accordance with the following criteria:

(1) The Department may exempt a consumer product from the VOC limits specified in § 130.211 (relating to table of standards) if a manufacturer demonstrates that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions than the standard established in § 130.211.

(2) A manufacturer shall apply in writing to the Department for an exemption claimed under this section. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant shall provide information necessary to enable the Department to establish enforceable conditions for granting the exemption including the VOC content for the innovative product and test methods for determining the VOC content.

(3) If the VOC limits specified in § 130.211 are lowered for a product category through a subsequent rulemaking, the innovative product exemptions granted for products in the product category, except as provided in this subsection, shall have no force and effect as of the effective date of the modified VOC standard. This paragraph does not apply to those innovative products which have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the Department at least 60 days before the effective date of the limits.

(4) If the Department believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in paragraph (1), the Department may modify or revoke the exemption as necessary to assure that the product will meet these criteria.

ADMINISTRATIVE REQUIREMENTS**§ 130.371. Code-dating.**

(a) *Code-dating.* Each manufacturer of a consumer product subject to §§ 130.211—130.216 (relating to standards) shall clearly display on each consumer product container or package, the day, month and year on which the product was manufactured, or a code indicating that date. The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cap/cover) without disassembling a part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than January 1, 2004. The requirements of this subsection do not apply to products containing no VOCs as defined in § 130.202 (relating to definitions), or containing VOCs at 0.10% by weight or less.

(b) *Explanation of code.* If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to §§ 130.211—130.216, an explanation of the code shall be filed with the Department no later than 12 months prior to the effective date of the applicable standard specified in § 130.211.

§ 130.372. Most restrictive limit.

Notwithstanding the definition of "product category" in § 130.202 (relating to definitions), if on the principal display panel of a consumer product, a representation is made that the product may be used as, or is suitable for use as a consumer product for which a lower VOC limit is specified in § 130.211 (relating to table of standards), the lowest VOC limit applies. This requirement does not apply to general purpose cleaners and antiperspirant/deodorant products.

§ 130.373. Additional labeling requirements for aerosol adhesives.

(a) In addition to the requirements specified in §§ 130.371 and 130.372, 130.391 and 130.392, both the manufacturer and responsible party for each aerosol adhesive product subject to this subchapter shall ensure that all products clearly display the following information on each product container which is manufactured on or after January 1, 2005:

(1) The aerosol adhesive category as specified in § 130.211 (relating to table of standards) or an abbreviation of the category shall be displayed.

(2) The applicable VOC standard for the product that is specified in § 130.211 expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the Department, as provided in §§ 130.451—130.465 (relating to ACP for consumer products).

(3) If the product is included in an alternative control plan approved by the Department, and the product exceeds the applicable VOC standard specified in § 130.211, the product shall be labeled with the term "ACP" or "ACP product."

(4) If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed.

(5) If the manufacturer or responsible party uses an abbreviation as allowed by this section, an explanation of the abbreviation shall be filed with the Department before the abbreviation is used.

(b) The information required in § 130.371(a) (relating to code-dating) shall be displayed on the product container so that it is readily observable without removing or disassembling a portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing product packaging.

REPORTING REQUIREMENTS

§ 130.391. Required reporting of information to the Department.

Upon 90 days written notice, the Department may require a responsible party to report information for a consumer product the Department may specify.

§ 130.392. Confidentiality.

The information submitted by a responsible party under § 130.391 (relating to required reporting of information to the Department) or in accordance with other provisions in this subchapter will be handled in accordance with the procedures specified in section 13.2 of the Air Pollution Control Act (35 P. S. § 4013.2).

VARIANCES

§ 130.411. Application for variance.

(a) A person who cannot comply with §§ 130.211—130.216 (relating to standards), because of extraordinary reasons beyond the person's control, may apply in writing to the Department for a variance. The variance application shall set forth:

(1) The specific grounds upon which the variance is sought.

(2) The proposed dates by which compliance with § 130.211 (relating to table of standards) will be achieved.

(3) A compliance report reasonably detailing the methods by which compliance will be achieved.

(b) No later than 75 days after receipt of a complete variance application containing the information required in subsection (a), the Department will hold a public hearing in accordance with § 130.471 (relating to public hearings) to determine:

(1) Whether a variance from the requirements in §§ 130.211—130.216 is necessary.

(2) Under what conditions a variance from the requirements in §§ 130.211—130.216 is necessary.

(3) To what extent a variance from the requirements in §§ 130.211—130.216 is necessary.

(c) The Department will not grant a variance unless the applicant demonstrates in writing the following to the Department's satisfaction:

(1) That because of reasons beyond the reasonable control of the applicant, requiring compliance with §§ 130.211—130.216 would result in extraordinary economic hardship.

(2) That the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding increased emissions of air contaminants that would result from issuing the variance.

(3) That the compliance program proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

§ 130.412. Variance orders.

A variance order shall specify a final compliance date by which the requirements of §§ 130.211—130.216 (relating to standards) will be achieved. A variance order shall contain a condition that specifies increments of progress necessary to assure timely compliance, and other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary.

§ 130.413. Termination of variance.

A variance shall cease to be effective upon failure of the party to whom the variance was granted to comply with a term or condition of the variance.

§ 130.414. Modification of variance.

Upon the application of a person, the Department may review, and for good cause, modify or revoke a variance from requirements of §§ 130.211—130.216 (relating to standards) after holding a public hearing in accordance with § 130.471 (relating to public hearings).

TEST METHODS

§ 130.431. Testing for compliance.

(a) Testing to determine compliance with this subchapter shall be performed by one of the following:

(1) Using CARB Method 310, "*Determination of Volatile Organic Compounds (VOC) in Consumer Products*," adopted September 25, 1997, and as last amended on September 3, 1999.

(2) Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon approval of the Department.

(3) Calculation of the VOC content from records of the amounts of constituents used to make the product under the following criteria:

(i) Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records shall be kept for at least 3 years and be made available to the Department on request.

(ii) For the purposes of this section, the VOC content (expressed as a percentage) shall be calculated according to the following equation:

$$\text{VOC Content} = \frac{(B - C)}{A} \times 100$$

where,

A = total net weight of unit (excluding container and packaging)

B = total weight of all VOCs per unit.

C = total weight of VOCs exempted under §§ 130.331—130.337, 130.351 and 130.352 per unit

(iii) If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this section.

(b) Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 (May 25, 1990).

(c) Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(d) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (September 28, 1990).

(e) A person may not create, alter, falsify or otherwise modify records so that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and other test, processes or records used in connection with product manufacture.

ACP FOR CONSUMER PRODUCTS

§ 130.451. Alternative methods of compliance.

The purpose of this section is to provide an alternative method to comply with the Table of Standards specified in § 130.211 (relating to table of standards). This alternative is provided by allowing responsible ACP parties the option of voluntarily entering into separate alternative control plans for consumer products, as specified in this subchapter. Only responsible ACP parties for consumer products may enter into an ACP.

§ 130.452. Exemption.

A manufacturer of consumer products which has been granted an ACP agreement by the CARB under Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the CCR shall be exempt from § 130.211 (relating to table of standards) for the period of time that the CARB ACP agreement remains in effect provided that all ACP Products within the CARB ACP agreement are contained in § 130.211. A manufacturer claiming such an ACP agreement on this basis shall submit to the Department a copy of the CARB ACP decision (that is, the Executive Order), including the conditions established by CARB applicable to the exemption.

§ 130.453. Request for exemption.

(a) Manufacturers of consumer products that have been granted an ACP agreement under the ACP provision in Subchapter 8.5, Article 4, sections 94540—94555, of Title 17 of the CCR based on California specific data, or that have not been granted an exemption by the CARB may seek an ACP agreement with the Department.

(b) The Department will not approve an ACP submitted by a responsible ACP party if the Department determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this subchapter, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

§ 130.454. Application for an ACP.

A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the ACP provision in Subchapter 8.5, Article 4, Sections 94540—94555, of Title 17 of the CCR based on California-specific data, or that has not been granted an exemption by the CARB may seek an ACP agreement by submitting an application. The application shall:

(1) Identify the responsible ACP party including names, telephone numbers and addresses of the representative of the manufacturer who will be responsible for implementing the ACP requirements specified in the ACP agreement.

(2) Contain a statement of whether the responsible ACP party is a small business or a one-product business.

(3) Contain a listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, and the like), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP.

(4) Demonstrate in writing to the satisfaction of the Department that the enforceable sales records to be used by the responsible ACP party for tracking product sales provide the following information:

(i) The names, telephone numbers, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales.

(ii) The enforceable sales of each ACP product.

(iii) A written demonstration to the satisfaction of the Department regarding the validity of the enforceable sales.

(iv) The percentage of the gross Pennsylvania sales which is comprised of enforceable sales.

(v) That the ACP products have enforceable sales that are 75% or more of the gross Pennsylvania sales. Only ACP products meeting this criteria will be allowed to be sold in this Commonwealth under an ACP.

(5) Include legible copies of the existing labels for each ACP product specifying the VOC and LVP content.

(6) Report for each of the ACP products:

(i) The VOC and LVP-VOC contents of the product at the time the application for an ACP is submitted.

(ii) Changes in VOC and LVP contents of the product that have occurred within the 4 years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than 10.0% of the VOC or LVP contents reported in subparagraph (i).

(7) Contain a written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP and to display the date-code on each ACP product container or package no later than 5 working days after the date an ACP agreement is signed by the Department.

(8) Contain an operational plan covering the products identified under this section for each compliance period that the ACP will be in effect. This plan shall:

(i) Identify the compliance periods and dates for the responsible ACP party to report the information required by the Department in the ACP agreement approving an ACP. The length of the compliance period chosen by the responsible ACP party shall be no longer than 365 days.

(ii) Identify the specific enforceable sales records to be provided to the Department for enforcing this chapter and the ACP agreement. The enforceable sales records shall be provided to the Department no later than the compliance period reporting dates specified in subparagraph (i).

(iii) For a small business or a one-product business that will be relying on surplus trading to meet the ACP limits, contain a written commitment from the responsible ACP parties that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(iv) Specify the VOC content levels for each ACP product that will be applicable for the ACP product during each compliance period and identify the specific methods by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) calculated for each specified method.

(v) Estimate the projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(vi) Contain a detailed demonstration showing the combination of specific ACP reformulations or surplus trading reductions (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that reformulations or surplus trading reductions are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (that is, by ACP reformulation). This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold in this Commonwealth during each compliance period.

(vii) Contain a written explanation of the date-codes that will be displayed on each ACP product container or packaging.

(viii) Contain a statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

(ix) Contain an operational plan ("reconciliation of shortfalls plan") which commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall demonstrate how shortfalls will be reconciled within 90 working days from the date the shortfall is determined, listing the records and other information that will be used to verify that the shortfalls were reconciled.

(9) Contain a declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct under penalty of law. This declaration shall certify that all reductions in the VOC content of a product will be real and actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or any other attempts to circumvent this chapter.

§ 130.455. Recordkeeping and availability of requested information.

(a) Information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for at least 3 years after the records are generated. The records shall be clearly legible and maintained in good condition during this period.

(b) The records specified in this section shall be made available to the Department:

(1) Immediately upon request during an onsite visit to a responsible ACP party.

(2) Within 15 working days after receipt of a written request from the Department.

(3) Within a time period mutually agreed upon by both the Department and the responsible ACP party.

§ 130.456. Surplus reductions and surplus trading.

(a) The Department will issue surplus reduction certificates which establish and quantify, to the nearest pound of VOC reduced, surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to or transferred to a

responsible ACP party operating under an ACP, as provided in this section. Surplus reductions will be calculated by the Department at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates do not constitute instruments, securities or other form of property.

(b) The issuance, use and trading of all surplus reductions shall be subject to the following provisions:

(1) For the purposes of this section, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in § 130.211 (relating to table of standards) may not be used to generate surplus reductions.

(2) Surplus reductions are valid only when generated by a responsible ACP party, and only while that responsible ACP party is operating under an approved ACP.

(3) Surplus reductions are valid only after the Department has issued an ACP agreement under this section.

(4) Surplus reductions issued by the Department may be used by the responsible ACP party who generated the surplus until the reductions expire or are traded or until the ACP is canceled under this section.

(5) Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

(6) Except as provided in this section, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

(7) While valid, surplus reductions can be used only for one of the following purposes:

(i) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period.

(ii) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided the reconciliation is part of the reconciliation of shortfalls plan approved by the Department under this section.

(8) A valid surplus reduction shall be in effect starting 5 days after the date of issuance by the Department, for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

(9) At least 5 working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the Department in writing of the transfer. The notification shall include the following:

(i) The date the transfer is to become effective.

(ii) The date the surplus reductions being traded are due to expire.

(iii) The amount (in pounds of VOCs) of surplus reductions that are being transferred.

(iv) The total purchase price paid by the buyer for the surplus reductions.

(v) The contact persons, names of the companies, street and mail addresses and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions.

(vi) A copy of the Department-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of the surplus reductions as provided in this section.

(10) Surplus reduction credits shall only be traded between ACPs products for consumer products.

§ 130.457. Limited-use surplus reduction credits for early reformulations of ACP products.

(a) For the purposes of this section, "early reformulation" means an ACP product which is reformulated to result in a reduction in the product's VOC content, and which is sold, supplied or offered for sale in this Commonwealth for the first time during the 1 year (365-day) period immediately prior to the date on which the application for a proposed ACP is submitted to the Department. "Early reformulation" does not include reformulated ACP products which are sold, supplied or offered for sale in this Commonwealth more than 1 year prior to the date on which the ACP application is submitted to the Department.

(b) If requested in the application for a proposed ACP, the Department will, upon approval of the ACP, issue surplus reduction credits for early reformulations of ACP products, provided that the following documentation has been provided by the responsible ACP party to the satisfaction of the Department:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level which is below the pre-ACP VOC content of the product, or below the applicable VOC standards in § 130.211 (relating to table of standards), whichever is the lesser of the two.

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets in this Commonwealth within the time period specified in this section.

(3) Accurate sales records for the early reformulated ACP product which meets the definition of "enforceable sales records" in § 130.202 (relating to definitions), and which demonstrate that the enforceable sales for the ACP product are at least 75% of the gross Pennsylvania sales for the product.

(4) Accurate documentation for the early reformulated ACP product which meets the requirements specified in this section, and which identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in this section.

(c) Surplus reduction credits issued under this section shall be calculated separately for each early reformulated ACP product by the Department according to the following equation:

$$SR = \frac{\text{Enforceable Sales} \times ((\text{VOC Content})_{\text{initial}} - (\text{VOC Content})_{\text{final}})}{100}$$

where,

SR = surplus reductions for the ACP product, expressed to the nearest pound

Enforceable Sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product,

VOC Content_{initial} = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in § 130.211, whichever is the lesser of the two, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product,

VOC Content_{final} = the VOC Content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product.

(d) The use of surplus reduction credits issued under this section shall be subject to the following:

(1) Surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and may not be used for another purpose.

(2) Surplus reduction credits may not be transferred to, or used by, another responsible ACP party.

(3) Except as provided in this section, surplus reduction credits shall be subject to the requirements applicable to surplus reductions and surplus trading, as specified in this section.

§ 130.458. Reconciliation of shortfalls.

(a) At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period, as specified in the ACP agreement approving the ACP. Upon receipt of this information, the Department will determine the amount of a shortfall that has occurred during the compliance period, and notify the responsible ACP party of this determination.

(b) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP, within 30 working days from the date of written notification of a shortfall by the Department.

(c) Shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

(d) The requirements specified in the ACP agreement approving an ACP, including the applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

§ 130.459. Notification of modifications to an ACP by the responsible ACP party.

(a) *Modifications that do not require Department preapproval.* The responsible ACP party shall notify the Department, in writing, of a change in the following with respect to an ACP product:

- (1) Product name.
- (2) Product formulation.
- (3) Product form.
- (4) Product function.
- (5) Applicable product category.
- (6) VOC content.
- (7) LVP content.
- (8) Date-codes.
- (9) Recommended product usage directions.

(b) *Notification.* The notification shall be submitted no later than 15 working days from the date the change occurs. For each modification, the notification shall fully explain the following:

- (1) The nature of the modification.
- (2) The extent to which the ACP product formulation, VOC content, LVP content or recommended usage directions will be changed.
- (3) The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period.
- (4) The effective date and corresponding date-codes for the modification.

§ 130.460. Modifications that require Department preapproval.

The responsible ACP party may propose modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP agreement approving the ACP. Proposed modifications shall be fully described in writing and forwarded to the Department. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this subchapter. The responsible ACP party shall meet all applicable requirements of the existing ACP until a proposed modification is approved in writing by the Department.

§ 130.461. Other modifications.

The responsible ACP party shall notify the Department, in writing, of information that the responsible ACP party may have which may alter the information submitted under § 130.454 (relating to application for an ACP). The responsible ACP party shall provide the notification to the Department no later than 15 working days from the date the information is known to the responsible ACP party.

§ 130.462. Modification of an ACP by the Department.

(a) The Department will modify the ACP as necessary to ensure that the ACP meets the requirements of this subchapter and that the ACP emissions will not exceed the ACP limit if the Department determines one of the following:

(1) The enforceable sales for an ACP product are no longer at least 75% of the gross Pennsylvania sales for that product.

(2) The information submitted under the approval process in § 130.454 (relating to application for an ACP) is no longer valid.

(3) The ACP emissions are exceeding the ACP Limit specified in the ACP agreement.

(b) The Department will not modify the ACP without first affording the responsible ACP party an opportunity for a public hearing in accordance with § 130.471 (relating to public hearings) to determine if the ACP should be modified.

(c) If an applicable VOC standard specified in § 130.211 (relating to table of standards) is modified by CARB in a future rulemaking, the Department will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of its effective date.

§ 130.463. Cancellation of an ACP.

An ACP shall remain in effect until:

(1) The ACP reaches the expiration date specified in the ACP agreement.

(2) The ACP is modified by the responsible ACP party and approved by the Department.

(3) The ACP is modified by the Department.

(4) The ACP includes a product for which the VOC standard specified in § 130.211 (relating to table of standards) is modified by the Department in a future rulemaking, and the responsible ACP party informs the Department in writing that the ACP will terminate on the effective date of the modified standard.

(5) The ACP is cancelled by the Department.

§ 130.464. Treatment of information.

The information required by this section, §§ 130.451—130.463 and 130.465 related to product formulation shall be protected as confidential business information upon written request to the Department by the responsible ACP party. Other information submitted to the Department to meet the requirements of this subchapter will be handled in accordance with section 13.2 of the Air Pollution Control Act (35 P. S. § 4013.2).

§ 130.465. Other applicable requirements.

A responsible ACP party may transfer an ACP to another responsible ACP party, provided that the following conditions are met:

(1) The Department shall be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least 5 working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

(2) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with the requirements of the ACP agreement approving the ACP and this subchapter.

PUBLIC HEARING REQUIREMENTS**§ 130.471. Public hearings.**

(a) Prior to issuance, modification or revocation of a variance order or an ACP, the Department will hold a hearing to take public comment.

(b) The Department will publish notice of the time, place and purpose of the hearing in a local newspaper of general circulation and the *Pennsylvania Bulletin* not less than 30 days prior to the hearing.

(c) At least 30 days prior to the hearing the Department will make available the application for the variance or ACP and the proposed order for issuing, modifying or revoking the variance or ACP.

[Pa.B. Doc. No. 02-1732. Filed for public inspection October 4, 2002, 9:00 a.m.]

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Proposed Amendments to the Comprehensive Plan and Water Code Relating to the Operation of Lake Wallenpaupack During Drought Watch, Drought Warning and Drought Conditions

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on proposed amendments to the Commission's *Comprehensive Plan* and *Water Code* to incorporate a revised drought operating plan for the Lake Wallenpaupack Reservoir and Hydroelectric Facility, located in Pike County in the Lackawaxen Watershed. The reservoir and facility are currently owned and operated by PPL Holtwood, LLC (PPL). The proposed rulemaking would increase by 12,500 acre-feet, or 4.1 billion gallons, the amount of Lake Wallenpaupack water available to the Commission for flow augmentation in the main stem Delaware River during drought watch, drought warning and drought emergency conditions, as defined in Section 2.5.3 of the Water Code and Docket D-77-20 CP (Revision 4), dated April 28, 1999. The minimum lake elevation to be maintained during drought conditions B the target elevation for December 1 B would decrease from 1,170 feet to 1,167.5 feet. The right to use as much as 4.1 billion gallons of Lake Wallenpaupack water to augment Delaware River flows during drought would be deemed to satisfy up to 10,000 acre-feet of the Commission's consumptive use replacement requirement for the Martins Creek and Lower Mount Bethel generating facilities and future facilities that PPL (or its successors in interest) might construct. That is, under the proposed drought plan, the Commission would release PPL (and its successors) from the requirement that it provide up to 10,000 acre-feet or 3.3 billion gallons of dedicated storage to replace, gallon for gallon, water consumptively used by the entity's existing and future generating facilities when the basin is in drought watch, drought warning or drought operations.

Dates

The public hearing will be held on Wednesday, October 16, 2002, during the Commission's regular business meeting, which will begin at 1:30 p.m. Persons wishing to testify are asked to register in advance with the Commission Secretary, (609) 883-9500 ext. 203. Written comments will be accepted through Friday, November 15, 2002. Comments must be received, not merely postmarked, by that date.

Addresses

The public hearing will be held at the Commission's offices, 25 State Police Drive, West Trenton, NJ. Written comments should be addressed to the Commission Secretary at Delaware River Basin Commission, P. O. Box 7360, West Trenton, NJ 08628-0360.

Further Information, Contacts

A draft resolution enacting the proposed amendments to Sections 2.5.5 and 2.5.6 of the *Water Code* and the current text of the *Water Code* (which is incorporated in the *Comprehensive Plan*) may be viewed on the Commission's website at <http://www.drbc.net>. Contact Pamela M. Bush at (609) 883-9500 ext. 203, with questions about the proposed rulemaking change or the rulemaking process.

It is proposed to amend Article 2, Sections 2.5.5 and 2.5.6 of the Commission's *Water Code* (25 Pa. Code § 901.2) (which is incorporated in the Commission's *Comprehensive Plan*). References to "drought watch" are noted in brackets to reflect that the "drought watch" condition, defined by Docket D-77-20 CP (Revision 4), has not to date been incorporated in the rule. The "drought watch" condition is not proposed to be incorporated in the rule at this time. However, for the period of effectiveness of the relevant provisions of Docket D-77-20 CP (Revision 4), the proposed rule changes would be applied to the "drought watch" condition where noted.

The following sentence is added at the end of the first paragraph of Section 2.5.5:

Lake Wallenpaupack also may be utilized to complement the drought management operations of the New York City reservoirs during "drought warning" [and drought watch] conditions as defined by Figure 1 in Section 2.5.3A.

The second paragraph of Section 2.5.5 (beginning "Lake Wallenpaupack and the Mongaup reservoirs . . .") is revised as follows, beginning with the third sentence:

During "drought" and "drought warning" [and drought watch] conditions, as defined in Figure 1 of Section 2.5.3.A of the Water Code, the power companies shall release water only in accordance with Commission direction. The Lake Wallenpaupack elevation schedules during normal, drought warning, [drought watch,] and drought conditions are set forth in Table 2. The lake elevations in Table 2 have been established to preserve the recreation values and other operational benefits of the lake while also providing water storage to be utilized at the direction of the Commission during the Commission's drought operations as set forth in this section and in Section 2.5.6. The utilization of Lake Wallenpaupack at the direction of the Commission during the Commission's drought operations shall be conditioned upon the following:

1. Utilization of Lake Wallenpaupack during drought warning [and watch] shall be consistent with PPL's FERC license and power generation requirements as well as with lake and downstream needs.
2. During drought, PPL may, at the Commission's direction, operate for power production when the lake elevation is above the following first-of-month "normal elevation" as defined in Table 2.
3. During a declared power emergency, PPL may operate for power production regardless of lake elevation.
4. Subject to the concurrence of the Commission, in response to changing electrical demand patterns, PPL may revise the lake elevations for "normal conditions" shown in Table 2.

Table 2 of Section 2.5.5 is revised in its entirety, as follows:

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TABLE 2. LAKE WALLENPAUPACK ELEVATION SCHEDULES

Day	Normal Conditions	Drought Warning [and Watch]	Drought
June 1	1187.0	1187.0	1187.0
July 1	1185.0	1185.0	1185.0
August 1	1183.0 ¹	1183.0 ¹	1183.0 ¹
September 1	1181.0	1180.0	1179.0
October 1	1179.0	1176.0	1175.0
November 1	1181.0	1172.0	1171.0
December 1	1182.0	1167.5	1167.5
January 1	1183.0	1170.1	1170.1
February 1	1181.5	1173.3	1173.3
March 1	1180.0	1175.6	1175.6
April 1	1182.3	1182.3	1182.3
May 1	1185.6	1185.6	1185.6

¹ The existing FERC license for the Lake Wallenpaupack Hydroelectric Project requires that, except when flood waters are being stored, the maximum elevation of the lake shall be limited to elevation 1,182.0 between August 1 and November 15 of each year (Article 41). In its application to the FERC for a new license, PPL will seek to include the drought condition lake elevation schedules in Table 2 on a permanent basis, including a lake elevation of 1,183.0 on August 1. In the interim, until the FERC issues a new license, PPL will request annual approval from the FERC to operate the lake in accordance with Table 2 during the August 1-November 15 period. PPL will notify the Commission of the FERC's response to each annual request.

Subsection C.3.c is added to Section 2.5.6, as follows:

c. The Commission may direct releases from Lake Wallenpaupack subject to the same conditions as applied to operation during lower basin drought in D.3.e, except that utilization of Lake Wallenpaupack during lower basin drought warning shall be consistent with PPL's FERC license and power generation requirements as well as with lake and downstream needs.

At Subsection D.3.b.iv of Section 2.5.6, the volume of storage assigned to Lake Wallenpaupack is revised to 33.9 bg from 29.81 bg.

A second sentence is added to Subsection D.3.e.i of Section 2.5.6 as follows:

During drought, PPL may, at the Commission's direction, operate for power production when the lake elevation is above the following first-of-month "normal elevation" as defined in Table 2 and during a declared power emergency regardless of lake elevation.

PAMELA M. BUSH,
Secretary

Fiscal Note: 68-42. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

CHAPTER 901. GENERAL PROVISIONS

§ 901.2. Comprehensive Plan and water quality.

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart [(2001)] 2002 and the Water Code and Water Quality Standards as set forth in 18 DFR

Part 410 [(2001)] 2002 are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 02-1733. Filed for public inspection October 4, 2002, 9:00 a.m.]

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 18]

Public Swimming and Bathing Places

The Department of Health (Department) proposes to amend Chapter 18 (relating to public swimming and bathing places) to read as set forth in Annex A. The proposed rulemaking includes requirements relating to the bacteriological monitoring of water at public bathing beaches to protect the public health while swimming and bathing.

A. Purpose of the Proposed Rulemaking

The proposed rulemaking is intended to provide enhanced public health protection to individuals who bathe and swim at this Commonwealth's public bathing beaches. The proposed rulemaking specifies the requirements for notifying the public when a bathing beach is closed, the type of bacteriological water testing that must be done, the level of disease-carrying organisms in the water that requires a beach to be closed, the procedures for collecting water samples and the laboratory testing procedures. Additional requirements for beaches located on Lake Erie are also included. The effect of the proposed rulemaking will be improved detection of disease-carrying organisms in bathing beach water and reduced public exposure to these organisms.

The proposed rulemaking applies to 242 bathing beaches in this Commonwealth that are permitted by the Department, including those located at State parks, community locations and privately-owned campgrounds, resorts and camps. The scope of the proposed rulemaking includes public bathing beaches that have a fresh water source or flow, including natural and manmade lakes and ponds and beaches located on rivers and streams.

The proposed rulemaking is consistent with recommendations of the Environmental Protection Agency (EPA) relating to bacteriological testing of water at public bathing beaches. The EPA recommends that water at public bathing beaches be tested each week for *Escherichia coli* (E. coli) to detect disease-carrying organisms in the water that may cause human illness such as gastroenteritis, salmonellosis, cholera, respiratory infections, hepatitis, giardiasis, dysentery, cryptosporidiosis, parasitic worms and *lysteria*. These illnesses can be mild to very serious or deadly. Ingesting even a small mouthful of contaminated water has the potential of causing any of these illnesses. Young children are especially at risk due to the greater likelihood of swallowing bathing water. Children, the elderly and people with weakened immune systems have a greater chance of getting sick if they come in contact with contaminated water.

The most frequent sources of disease-carrying organisms in bathing water are sewage overflows, animal waste, polluted storm runoff, sewage treatment plant and septic system malfunctions, boating waste, trash, pesticides and fertilizers. Pollution is also much higher during and following a rainstorm because water draining into the beach may be carrying sewage from overflowing

sewage treatment systems. By frequent water testing, disease-carrying organisms that may be harmful to humans, can be detected earlier and the source can be located and either corrected or a beach can be closed until the contamination is at a nonharmful level.

On October 10, 2000, the Beaches Environmental Assessment and Coastal Health Act (Beach Act) (Pub. L. No. 106-284), was passed and amended the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1387) to include significant new beach protections. The Beach Act applies to coastal beaches on the Great Lakes, including those at Presque Isle State Park in Erie County. The Beach Act requires that all states with coastal beaches adopt either the E. coli or the enterococci testing standard for Great Lakes beaches, as well as public notification of beach closure requirements. The Federal statutory deadline for adopting state regulations is April 2004. The new Federal law governs only Lake Erie beaches in this Commonwealth; however, the proposed rulemaking extends the same level of protection to all public bathing beaches in this Commonwealth to provide a more effective level of public health protection to all individuals using any of this Commonwealth's public bathing beaches. Consistent with the Commonwealth's commitment to enhance tourism, the proposed rulemaking supports tourism by providing increased public health protections at this Commonwealth's beaches.

A comparison of requirements and practices of several other states was completed by the Department. States such as Illinois, Ohio and Michigan are already following the EPA standard for E. coli testing. Other states such as New York and Indiana are in the process of changing their laws and regulations to require the E. coli testing method.

Several formal and informal meetings and discussions have been held over the past 18 months with consumer protection advocates, campground operators, municipal beach operators, health care professionals and local government agencies to present and discuss the Department's proposed rulemaking. A public meeting was held in August 2002 to review the proposed rulemaking, with invitations sent to 26 affected consumer, health care professional, beach operator and municipal organizations. To further the effectiveness of the proposed rulemaking, the Department is coordinating the proposed rulemaking with the Department of Environmental Protection to assure compatibility with other Commonwealth regulations relating to water quality. The Department has also discussed the proposed rulemaking with the Department of Conservation and Natural Resources to coordinate implementation issues relating to the State park beaches.

B. Summary of the Proposed Rulemaking

The proposed rulemaking specifies the requirements for notifying the public when a bathing beach is closed, the type of bacteriological water testing that must be done, the level of disease-carrying organisms in the water that requires a beach to be closed, the procedures for collecting water samples and the laboratory testing procedures and documentation. Additional requirements for a beach located on Lake Erie are also included. Following is a summary of the specific proposed amendments:

Section 18.1. Definitions. The Department is proposing to add a definition of "local health department" to clarify the meaning of this term as used in § 18.30(h) (relating to water samples). The definition is based on the Local Health Administration Law (16 P. S. §§ 12001—12028). It tracks the definition of "local health department" found in

other Department regulations. See 28 Pa. Code Chapter 27 (relating to communicable and noncommunicable diseases).

Section 18.28. Bathing beach contamination. Subsection (a) includes proposed amendments relating to the requirements for notifying the public if a beach is closed. The Department is proposing amendments to specify the size and the location of the posted signs. This requirement is consistent with the EPA's public notice requirement under the Beach Act. In discussions with this Commonwealth's beach operators, while public notice of beach closure is generally provided, the method of providing notice of closure and the actual signage varies across this Commonwealth. Some beaches post closings on websites as well as with visual signs at the beach. The Department is proposing to regulate the size and location of the signs to give clear public notice of a beach closing. The sign need only inform the public that the beach is closed and need not specify the reason for the closing.

Subsection (b)(2) proposes to amend the type of water testing from a fecal coliform test to an E. coli test in accordance with recommendations of the EPA. The current paragraph requires a weekly fecal coliform test. This paragraph has been in effect since 1971. The proposed amendment would not change the frequency of testing that is required, but rather change the type of laboratory test that must be completed. The proposed amendment would not require permittees to collect additional samples of water.

The Department is proposing this amendment in the type of laboratory test based on current information and data that establishes the E. coli test to be better at identifying disease-carrying organisms that may cause a risk to humans than the currently required fecal coliform test. Both the fecal coliform and the E. coli test are indicators that the water has been contaminated with disease-carrying organisms from sewage or human or animal waste. However, the data demonstrates that the E. coli test is a more reliable indicator of the presence of organisms that cause human illness than the fecal coliform test.

E. coli is a type of fecal coliform bacteria that is commonly found in the intestines of animals and humans. Because it lives in the intestines, the presence of E. coli in water is a strong indicator that the water has been contaminated with sewage or human or animal waste. This waste may carry other kinds of disease-causing organisms and may indicate the need for additional testing. Most of the hundreds of strains of E. coli are perfectly harmless and live inside human intestines and actually aid in digestion. However, one particular strain, E. coli 0157:H7, can cause an infection that may result in serious diarrhea and abdominal cramps and is potentially fatal in small children. In accordance with the EPA recommendations and research, the fecal coliform test that is currently required is less effective than the E. coli test at establishing the presence of disease-carrying organisms.

The EPA has conducted studies at marine and freshwater bathing beaches designed to determine if swimming in sewage and waste contaminated water carries a health risk for bathers, and, if so, for what type of illness. The significant swimming-associated rates for gastroenteritis were always observed at the more polluted beaches at each study location. Statistically significant swimming-associated gastroenteritis rates were not observed at any of the relatively unpolluted beaches. The research confirmed that total coliforms and fecal coliforms showed

very weak correlations to gastroenteritis. The research showed that testing for either *E. coli* or enterococci did correlate highly to swimming-associated gastroenteritis in freshwater to indicate that these two tests are equally efficient for monitoring water quality in fresh water. The Department is proposing to use the *E. coli* test versus the enterococci test because the *E. coli* test is more available and less costly than the enterococci test; further research has proven that there is no greater level of protection in the enterococci test for freshwater beaches. The EPA research supports the premise that *E. coli* has a very strong correlation between positive results and incidence of people getting sick. The correlation for fecal coliforms, according to this research, is close to zero.

Subsection (b)(2) includes a proposed amendment to the level requiring a necessary beach closing from 1,000 per 100 milliliters for fecal coliform to 235 per 100 milliliters for *E. coli* in accordance with recommendations of the EPA. The EPA recommends various levels of protection based on water usage. The level suggested by the EPA for a designated freshwater beach area is 235 per 100 milliliters. The Department is proposing to adopt this standard. The EPA has other protection levels for marine water, infrequent bathing use and for other water uses such as boating or water sports which are not under the authority of the Department's public bathing place program.

Subsection (b)(3) includes a proposed amendment to the level requiring a necessary beach closing from 200 per 100 milliliters for fecal coliform to a level that exceeds a geographic mean of 126 per 100 milliliters for *E. coli* for any 30-day period, consistent with the recommendations of the EPA. This requirement for a study of the test results over a 30-day period is not new. It is required so that a comprehensive look at the test results over a 1-month period can be studied in addition to the 1-day levels. This is necessary to detect and correct long-term contamination problems at the beach.

Section 18.30. Water samples. Proposed subsection (b) is new. It includes a proposed amendment to require a sample be taken each year within 1 week prior to opening the beach for the season for all beaches. This is important so that any contamination that may have occurred over the fall, winter and spring seasons be detected prior to public use of the beach for the swimming season. The text of current subsection (b) is redesignated as subsection (c).

Proposed subsection (d) is also new. It addresses all bathing beaches, including those located on Lake Erie, and specifies the location within the swimming area from which the water sample must be drawn. Proposed subsection (d) would require the sample to be taken from water that is approximately 30 inches in depth and half-way down between the surface and the bottom of the water. This is consistent with current practice. Subsection (d)(3) would clarify the Department's existing authority to require additional analysis and water samples included in current subsection (b) (proposed subsection (c)). Proposed subsection (d)(3) states that the Department may require additional samples to be taken based on factors such as bather load, weather conditions and bacteriological history.

Proposed subsection (e) is new and applies only to Lake Erie beaches. The proposed requirements are mandated for Lake Erie under the Beach Act. Proposed subsection (e) would address multiple samplings for each Lake Erie beach applying an arithmetic mean and would prohibit sampling during high wave activity. These requirements have already been partially implemented by the Erie

County Health Department for the 2002 swimming season. Proposed subsection (e)(4) would also allow the Erie County Health Department to adopt additional standards that are more stringent than the proposed rulemaking.

Proposed subsection (f) is new and would clarify that swimming pools are still sampled and monitored in accordance with the current regulations requiring total coliform testing. No changes to the swimming pool requirements are included in this proposed rulemaking. The total coliform test for swimming pools is considered appropriate for swimming pools because of the different nature of the water. Swimming pool water is chemically treated and disinfected continuously. Bathing beaches must rely on the natural water flow to remove contamination. Therefore, the risk of disease transmission is much lower in a swimming pool than at a beach.

The current subsection (c) is redesignated as subsection (g).

Proposed subsection (h) is new. It includes a requirement for laboratories to report test results exceeding the limits in this section to the appropriate district office of the Department and to the appropriate local health department. This is important so the Department, or local health department in whose jurisdiction the bathing beach is located, can monitor compliance with this chapter and address long-term problems at bathing beaches. Most laboratories currently report in accordance with this requirement.

Section 18.31. Laboratory testing. Subsection (a) includes a proposed amendment requiring laboratories to perform tests of water samples in accordance with the 20th edition of the *Standard Methods for the Examination of Water and Wastewater*, as amended, or with another method approved by the EPA. This is necessary to stay abreast with current methods of water testing.

The Department proposes to add subsection (b) to clarify existing language in current subsection (a) relating to laboratory documentation of the method used to complete the tests of the water samples.

C. Statutory Authority

The Department's authority to promulgate regulations related to public swimming and bathing places is established under the Public Bathing Law (35 P. S. §§ 672—680d) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. Persons and Entities Affected

The proposed rulemaking would apply to 242 public bathing beaches that have a fresh water source or flow, including natural and manmade lakes and ponds and beaches located on rivers and streams, which are permitted by the Department. Bathing beaches located at State parks, community locations and privately-owned campgrounds, resorts and camps would be included. Specifically, those bathing beaches include: 47 State park beaches operated by the Department of Conservation and Natural Resources; 77 beaches operated by private campgrounds and resorts; 50 beaches operated by organized camps; 44 beaches operated by municipalities; and 4 Army Corps of Engineer Beaches. Of the 242 bathing beaches, the majority are located in the northern part of this Commonwealth with 40% in the northeast, 24% in the northwest and 10% in north central region of this Commonwealth. Only 26% of the bathing beaches are located in the southeast, southwest and south central parts of this Commonwealth.

E. *Cost and Paperwork Estimates*

The proposed rulemaking will have little fiscal effect on the Commonwealth, local government, the private sector or on the general public. The requirement for the frequency of water sampling has not been changed. There will be no cost increase for completing the E. coli test as opposed to the currently required fecal coliform test. The Department conducted a study of laboratory test fees in August 2002. Thirty-eight laboratories across this Commonwealth, New Jersey, Maryland, Ohio and Delaware that are used currently to complete water testing were contacted to compare fees for the new E. coli tests with the current fecal coliform tests. Of the 38 laboratories contacted, 19 charged the same for each test. Three charged slightly less for the E. coli test than the coliform test and three charged slightly more for the E. coli test than the coliform test. Ten of the laboratories do not currently conduct the E. coli tests. The Department will contact these laboratories, explain the new Commonwealth requirements and encourage the provision of the new tests. It is fully expected that additional laboratories will offer the E. coli tests once public demand is present.

It is not anticipated that there will be additional beach closings due to the new testing that would result in loss to the local economy or beach operator revenue. A study conducted by the Department of Environmental Protection in 2001-2002 of State park beaches comparing the results of fecal coliform and E. coli testing shows that, at the majority of beaches, similar numbers of closings would occur under either testing method. The Department does not anticipate a large number of additional closings. In the Department of Environmental Protection study, in a few incidences (6% of the total sample of 253), the exceedance level was reached for E. coli but not for fecal coliform. This data may indicate that there may be a few additional beach closures using the E. coli test. However, the public health protection provided by requiring the more reliable E. coli tests outweighs the minimal economic loss of a few potential added beach closures.

There is no additional paperwork required by the proposed rulemaking. While the proposed rulemaking would require laboratories to report positive results to the Department, or the local health department within whose jurisdiction the bathing beach is located, most laboratories already comply with this reporting requirement.

F. *Effective/Sunset Dates*

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

No sunset date has been established. The Department will monitor the effectiveness of these regulations on an ongoing basis through its annual health and safety inspections of public swimming and bathing places.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 25, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department 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 Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

H. *Contact Person*

Interested persons are invited to submit written comments, suggestions or objections relating to the proposed rulemaking to Dennis C. Wilson, Environmental Health Administrator, Department of Health, Bureau of Community Health Systems, Room 628 Health and Welfare Building, P. O. Box 90, Harrisburg, PA, 17108-0090, (717) 787-4366, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Persons with a disability may submit comments, suggestions or objections to Dennis Wilson in alternative formats, such as by audiotape or Braille, or by using V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800)654-5984 (TT) for persons with speech or language impairments.

Persons with a disability who would like to obtain this document in an alternative format should contact Dennis Wilson so that necessary arrangements may be made.

ROBERT S. ZIMMERMAN, Jr.,
Secretary

Fiscal Note: 10-170. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART II. LOCAL HEALTH

CHAPTER 18. PUBLIC SWIMMING AND BATHING PLACES

GENERAL PROVISIONS

§ 18.1. Definitions.

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

* * * * *

Local health department—Each county department of health under the Local Health Administration Law (16 P. S. §§ 12001—12028), and each department of health in a municipality approved for a Commonwealth grant to provide local health services under section 25 of the Local Health Administration Law (16 P. S. § 12025).

* * * * *

WATER SUPPLY

§ 18.28. Bathing beach contamination.

(a) Use of a bathing beach found to be contaminated shall be discontinued until written approval to **reopen the bathing beach for swimming or bathing** is obtained from the Department. **The permittee shall prominently post legible signs measuring at least 8" by 11" at all entrances to the bathing beach area informing the public that the bathing beach is closed and that swimming or bathing is prohibited.**

The approval will be given by the Department when the Department finds that the waters of the bathing beach are no longer contaminated.

(b) The water in bathing beaches will be considered contaminated for bathing purposes when one of the following conditions exists:

* * * * *

(2) [The fecal coliform density of a sample collected at a bathing beach exceeds 1,000 per 100 milliliters.] The E. coli density of a water sample taken from the bathing beach exceeds 235 per 100 milliliters.

(3) [The fecal coliform density in at least five consecutive samples of the water taken over not more than a 30-day period exceeds a geometric mean of 200 per 100 milliliters.] The E. coli density in all water samples taken from the bathing beach, in any 30-day period during the bathing beach's operating season, exceeds a geometric mean of 126 per 100 milliliters.

§ 18.30. Water samples.

* * * * *

(b) A sample shall be taken within 1 week prior to the opening of the bathing beach for the season.

(c) * * *

(d) Bathing water shall be sampled in accordance with the following requirements:

(1) Each sample shall be taken from water that is approximately 30 inches deep and at a midpoint between the bottom and the surface of the water.

(2) Each sample shall be tested individually for E. coli in accordance with § 18.31.

(3) The Department may require additional samples be taken based upon the size of the bathing area, bather loads, weather conditions, the bacteriological history of the water, as well as other factors that may influence the quality of the water.

(e) For a bathing beach located on Lake Erie, the bathing water shall be sampled in accordance with subsections (a), (b) and (d) and the following additional requirements:

(1) At least three samples of water shall be taken from each beach at least once a week. One sample shall be taken from approximately 50 feet from each end of the beach and the third sample shall be taken from the center of the beach.

(2) The arithmetic mean of the three samples from each beach shall be used to determine if the beach water is contaminated using the standards described in § 18.28 (relating to bathing beach contamination).

(3) A sample may not be taken when the beach is closed due to high wave activity, but shall be taken the day the beach is reopened for swimming and bathing.

(4) The Erie County Department of Health may impose additional requirements that are equal to or more stringent than the requirements of this section.

(f) For a swimming pool, specialty pool, spa and hot tub, the bathing water shall be sampled at least

once a week from the area of average depth, in accordance with § 18.27 (relating to swimming pool contamination).

* * * * *

[(c)] (g) * * *

(h) The laboratory conducting the bacteriological testing shall report test results exceeding the criteria specified in §§ 18.27 and 18.28 (relating to swimming pool contamination; and bathing beach contamination) to the appropriate district office of the Department or the local health department within 24 hours of the availability of the laboratory result.

§ 18.31. Laboratory testing.

(a) Laboratory tests of water samples shall be performed by competent personnel at an environmental laboratory that is registered by the Department of Environmental Protection in accordance with the procedure provided in the [12th edition of] *Standard Methods for the Examination of Water and Wastewater, 20th edition*, published jointly by the American Public Health Association and the American Water Works Association, as amended, or in accordance with a method approved by the Environmental Protection Agency for the testing of water samples. [Conformity to these standards shall be evidenced by a statement from the laboratory to such effect.]

(b) The laboratory shall document the method used to complete the tests of the water samples and make the documentation available to the Department upon request.

[Pa.B. Doc. No. 02-1734. Filed for public inspection October 4, 2002, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

[55 PA CODE CHS. 178 AND 181]

Resource Provisions for Categorically NMP-MA and MNO-MA; Income Provisions for Categorically Needy NMP-MA and MNO-MA

The Department of Public Welfare (Department) proposes to amend Chapters 178 and 181 (relating to resource provisions for categorically NMP-MA and MNO-MA; and income provisions for categorically needy NMP-MA and MNO-MA) under the authority of sections 201(2), 403(b), 441.1 and 442.1 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b), 441.1 and 442.1); sections 1917(c) and 1924 of Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396p(c) and 1396r-5); and Federal regulations for posteligibility treatment of income of institutionalized individuals found in 42 CFR 435.725(c)(4)(ii) and (d) and 435.832(c)(4)(ii) and (d) (relating to post-eligibility treatment of income of institutionalized individuals in SSI States; application of patient income to the cost of care; and post-eligibility treatment of income of institutionalized individuals; application of patient income to the cost of care).

Purpose

The purpose of this proposed rulemaking is to codify rules that revise the Medical Assistance (MA) eligibility requirements for applicants and recipients in need of long-term care (LTC) services both in the community and in an institutional setting. This proposed rulemaking revises the financial requirements to qualify for MA payment for LTC services and posteligibility calculation of the amount of income the MA recipient in LTC facilities is required to contribute toward the cost of institutional care.

Background

The Department is committed to administering an efficient and effective MA program. The Department wants to ensure access to quality health care for its most vulnerable citizens, including those who require LTC services.

Over the past year, the Commonwealth, as well as many other states, has experienced a significant increase in costs under the MA Program. No immediate relief is in sight. This fiscal pressure has required states to examine closely all expenditures and evaluate and prioritize what programs can continue to be fully funded.

The Department has taken steps to contain costs in past years through the implementation of managed care and the institution of management controls to avoid payments for services not medically necessary. Despite these changes, expenses in the MA Program continue to grow.

MA is a means-tested Federal-State funded program designed to provide health care benefits to individuals with limited income and resources. While the Federal government provides a baseline of what eligibility groups must be covered and what benefits must be provided in order for states to receive Federal financial participation, states may choose to expand eligibility to additional groups as well as provide additional services. Historically, the Commonwealth has adopted most of the eligibility and service options under Federal law and exercised various options to use less restrictive methodologies to determine eligibility. As a result, the Commonwealth is administering one of the most generous MA Programs in the country.

In reviewing program areas to help reduce the significant growth in expenditures, the Department has compared its current MA Program requirements with the requirements the Federal government mandates as well as what other states provide. As a result of this comparison, options were identified that would bring Pennsylvania's program more in line with the Federal baseline as well as closer to what other states provide.

Despite the increasing costs, the Department, unlike its counterparts in other states, has not limited service coverage. Instead, the Commonwealth's approach has been to try to protect benefits for those in greatest financial need while looking at those areas of the program where individuals have some existing income or resources to pay for at least part of their care.

Current escalating cost in the MA Program compels the Department to make changes that will control costs without compromising access to LTC services. While taking steps to reduce coverage causes concern, taking less drastic action at this point to minimize growth now will hopefully mitigate the need to limit coverage or eliminate entire eligibility groups. These revisions target eligibility rules that are more generous than required by

Federal statute or regulation. Under current policy, some individuals are able to divert available resources to avoid paying for LTC. This proposed rulemaking will help maintain the current level of coverage for current recipients and require those with available resources to assume greater financial responsibility for their care.

This proposed rulemaking implements four changes to current policy related to eligibility for services for LTC under the MA Program. The first revision changes the method of computing available income and resources between spouses by implementing the Income-First Rule. This includes an expansion of the definitions to delineate the terms used to implement the Income-First Rule. (See §§ 178.2 and 178.124(b)(2) (relating to definitions; and resource eligibility for the institutionalized spouse.) The second revision expands the circumstances when the ineligibility period for services for LTC under the MA Program when an applicant or recipient transfers a resource and fair market value is not received. (See §§ 178.104(d) and 178.174(d) (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994; and disposition of assets and fair consideration provisions for transfers on or after July 30, 1994).) The third revision limits the amount of unpaid medical expenses owed by an MA recipient that is allowed as an income deduction when determining contribution toward the cost of LTC services. (See § 181.452(d)(5)(iii) (relating to posteligibility determination of income available from an MA eligible person toward the cost of care).) The final revision eliminates an optional income deduction that is currently provided for maintenance of a home when the LTC recipient's stay in the LTC facility is expected to be less than 6 months. (See § 181.452(d)(6).)

Income-First Rule

Background

The Medicare Catastrophic Coverage Act of 1988 (MCCA) (42 U.S.C.A. § 1396r-5) included provisions that protect the spouse living at home (called the community spouse (CS)) from having her resources depleted when the other spouse (called the institutionalized spouse (IS)) is admitted to an LTC facility. Until the MCCA, Federal standards often left a spouse living at home destitute, the couple's assets drained to qualify the spouse in the institution for MA. The provisions in MCCA responded to this problem. MCCA added section 1924 to Title XIX of the Social Security Act (42 U.S.C.A. § 1396r-5), revising the MA statutory standards for providing the CS with additional income to bring her up to the protected level. These requirements are known as the "spousal impoverishment" provisions. These provisions govern the treatment of assets (income and resources) of the couple for determining MA eligibility and allow for the provision of additional income to the CS.

The provisions of 42 U.S.C.A. § 1396r-5 require that a resource assessment be completed when one spouse is admitted to an LTC facility. The total available resources owned by the couple, both jointly and individually, on the date of admission are determined. A determination is made of the CS's share of the couple's total resources, generally one-half of the total subject to the minimum and maximum resource standards consistent with section 1924(c) of the Social Security Act. The remaining resources are considered available to the IS.

In addition to preserving resources for the CS, the requirements of MCCA were designed to ensure that the CS has sufficient income to meet basic monthly needs. Section 1924(d) of the Social Security Act requires the establishment of a minimum monthly maintenance needs

allowance for the CS. The minimum monthly maintenance needs allowance is an annually updated figure set to a level that is 1/12th of 150% of the official Federal poverty level for a family of two. If the CS's income is less than the minimum monthly maintenance needs allowance, states may adopt a method to permit the amount of the shortfall to be met from the income or resources of the IS in accordance with section 1924(d)(1)(B) and (f)(2)(A)(iii) of the Social Security Act.

The Department's current regulations provide that the income-first method is to be used for providing the CS with additional income to bring her up to the protected level. (See 55 Pa. Code §§ 178.124(b) and 181.452.) This income transfer must occur before additional resources can be protected to provide the CS with income. Current regulations, however, do not conform to current practice which is based on the provisions of a settlement agreement in *Hurly v. Houstoun*, C. A. No. 93-3666 (U. S. Dist. Ct. E. D. Pa.) In *Hurly*, plaintiffs challenged the Department's regulations implementing section 1924(d) of the Social Security Act, contending that the income-first rule did not comply with Federal law. As a result of a settlement reached between plaintiffs and the Department in June 1996, the Department revised its procedures. The Department uses an "annuity rule" which permits the couple to use resources to purchase an annuity that will provide the CS with the additional income that she is permitted. At the time the *Hurly* settlement was reached, there were no Federal regulations to interpret the Federal statute.

On September 7, 2001, the United States Department of Health and Human Services issued a notice of proposed rulemaking allowing states to choose either the income-first or resource-first method to determine how the CS will be provided with additional income. (See 66 FR 4676.) Thereafter, the United States Supreme Court decided that the income-first rule was a reasonable interpretation of section 1924(d) of the Social Security Act. See *Wisconsin Department of Health and Family Services v. Blumer*, 534 U.S. 952 (2002). Based upon these developments, the Department will restore the income-first policy which is set forth in the current regulations including certain technical amendments to improve clarity.

Proposed Rulemaking

This proposed rulemaking eliminates the Commonwealth's Annuity Rule procedure and implements the income-first method when determining how the CS is provided with additional income—the Federal term is the "CS monthly income allowance." Using the income-first rule takes into account the anticipated monthly contribution of income from the IS to the CS to bring the CS's income up to the protected income level. The monthly contribution of income from the IS to the CS is considered before any additional resources can be allocated to the CS for the purpose of generating income. These resources are intended to be used to help pay for the cost of LTC services until the IS is eligible for MA. This method eliminates the option for a couple to automatically preserve additional resources to purchase an annuity to generate monthly income for the CS.

Partial Month of Ineligibility

Background

Section 1917(c) of the Social Security Act (42 U.S.C.A. § 1396p(c)) requires a period of ineligibility for MA coverage of LTC services when the applicant or recipient or his spouse transfers resources for less than fair market

value within a specified look-back period. The period of ineligibility is called the penalty period or disqualification period. The length of the penalty period is calculated by dividing the uncompensated value of all transferred assets by the current average monthly rate for private nursing facility care (NFC) at the time of application for MA. States have the choice of not imposing a penalty period for transfers of less than a full month. Pennsylvania is using full months and rounding down when the calculation results in a fraction.

Proposed Amendment

This proposal expands the circumstances in which an MA ineligibility period for payment of LTC services will result from a transfer of an asset that occurs when fair market value has not been received. Currently, existing regulations do not require a penalty period for a transfer of an asset that is less than the average monthly rate for private NFC and for a partial penalty period of less than 1 month when the calculation of the period of ineligibility for payment of LTC services results in a fraction of a month. A penalty will be imposed under these proposed amendments for a transfer of asset that is less than the average monthly rate and for a partial penalty period. This proposal will require that an individual be responsible for paying for LTC services equal to the entire amount of the asset that was transferred for less than fair market value if a penalty is imposed due to failure to receive fair market value. Any transfer of assets, regardless of the amount, will be evaluated to determine if an individual will be denied payment of LTC services.

Limit on Unpaid Medical Expenses

Background

An MA recipient who is residing in an LTC facility is required to contribute to the cost of LTC by using monthly income after deductions in accordance with 42 CFR 435.725(c)(4)(ii) and 435.832(c)(4)(ii). Deductions include expenses for medical or remedial care recognized under state law but not covered under the state's MA plan. These deductions are subject to allowable limits the state may establish. Current regulations in § 181.452(d)(5)(ii) permit these deductions regardless of the amount of the expense when determining the amount of income an MA recipient must contribute toward the cost of LTC services. The medical expense is deducted from the MA recipient's income in the calendar month the medical expense is paid by the MA recipient.

Proposed Amendment

This proposal sets a limit of \$10,000 for an outstanding unpaid medical expense that can be used as an allowable medical expense deduction when calculating an MA recipient's contribution toward cost of care. The \$10,000 limit is a reasonable limit approximately equal to 3 months of NFC at the MA rate. The limit is intended to encourage individuals who are potentially eligible for MA to apply for MA on a timely basis to prevent a medical expense debt to a LTC facility at the private rate.

Elimination of the Home Maintenance Deduction

Background

States have the option of providing a home maintenance allowance deduction when determining contribution toward cost of NFC in accordance with 42 CFR 435.725(d) and 435.832(d). This deduction is allowed if a physician has certified that the resident will likely return home within 6 months.

Proposed Amendment

This proposal eliminates the home maintenance allowance as an allowable deduction when determining an MA recipient's contribution toward cost of NFC. It is estimated that these proposed amendments will affect approximately 3,794 individuals applying for or receiving LTC under the MA Program.

Need for Proposed Rulemaking

This proposed rulemaking is necessary to revise the MA eligibility requirements for applicants and recipients requesting LTC MA to address the significant growth in costs in the MA Program.

Summary of Requirements

I. The following are regulations that apply to applicants and recipients for LTC services both in the community and in an institutional setting:

Sections 178.104(d) and 178.174(d). These subsections are proposed to expand the circumstances in which there could be a period of MA ineligibility for LTC services due to a transfer of assets without receiving fair market value and increase the disqualification period. In accordance with 42 U.S.C.A. § 1396p(c), an applicant or recipient of MA or spouse of an applicant who transfers an asset without receiving fair market value could be subject to a period of ineligibility for payment of LTC services under the MA Program.

Currently, there is no disqualification or penalty period of less than 1 month. Consequently, a transfer of assets with a value at less than the average monthly pay rate for private NFC without receiving fair market value does not result in a penalty period for payment of LTC services. This revision expands the circumstances for a penalty period. Under the proposed change, a partial month penalty period may be imposed for an asset transfer that is less than the average monthly pay rate for private NFC.

In addition, the change extends the penalty period to include a partial month when the calculation to determine the penalty period yields a fraction. This revision will make applicants and recipients responsible for more of the cost of their LTC services both in institutional settings and for those LTC services received in a residential setting. Applicants and recipients will be responsible for paying toward the cost of LTC services the amount equivalent to the cost of the asset that was transferred without receiving fair market value.

II. The following are regulations that apply to applicants and recipients for LTC services in an institutional setting:

A. *Section 178.2.* This section has been expanded to include additional terms that are used to define various income standards and allowance amounts. These standards/amounts are applied to the provisions that govern the treatment of assets (income and resources) of a couple when one spouse is admitted to a LTC facility.

B. *Section 178.124(b)(2).* This paragraph is modified to incorporate the change in the method of providing the CS with additional income to bring her up to the protected level when one spouse is admitted to a LTC facility. Currently, the couple has the option to use available resources to purchase an annuity that will generate monthly income for the CS if the CS's monthly income is less than the protected income level established by Federal law. This revision will require that if the CS's own monthly income which includes interest income generated

by the resources that are protected for the CS is less than the protected income level, a contribution of monthly income can be provided from the IS. This revision does not eliminate the provision that protects the CS's income level; it is changing how the CS will receive that monthly income. If the CS's monthly income including the determined contribution of monthly income from the IS is less than the protected income level, the IS can continue to use available resources to purchase an annuity to generate monthly income for the CS.

C. *Section 181.452(d)(5).* This paragraph is revised to include a limitation on the total amount that is allowable as a medical and remedial expense deduction when determining an MA recipient's contribution toward cost of care. Currently, any medical or remedial expense, regardless of the amount, is an allowable deduction when determining an MA recipient's contribution toward cost of care. This change will limit the total deduction allowed for outstanding medical and remedial expenses to \$10,000. See 42 CFR 435.725(f) and 435.832(f).

D. *Section 181.452(d)(6).* This paragraph is deleted to remove the income deduction that is given for maintenance of an MA recipient's home for short-term stays in an LTC facility when determining contribution toward cost of care. See 42 CFR 435.725(d) and 435.832(d).

Affected Individuals and Organizations

This proposed rulemaking will affect applicants and recipients who are requesting or receiving LTC services, both in the community and in an institutional setting. Applicants and recipients will be responsible for paying more toward the cost of LTC.

Accomplishments/Benefits

This proposed rulemaking will continue to allow the Department to provide MA benefits to the Commonwealth's Federally-mandated eligibility groups, while providing sound fiscal management of the Commonwealth's limited resources.

Fiscal Impact

Commonwealth. The Department estimates the Fiscal Year 2002-2003 savings to be \$7.001 million (\$3.171 million in State funds).

Public Sector. There is a potential cost to county LTC facilities with residents who incur an outstanding unpaid medical expense for LTC services.

Private Sector. There is a potential cost to private LTC facilities with residents who incur outstanding medical expense for LTC services in excess of \$10,000 before becoming eligible for MA. Individuals may be responsible to pay more for LTC services under the income-first rule.

Paperwork Requirements

No additional forms or paperwork will be required to implement this change in the regulations. Current forms and workbook pages will continue to be used.

Effective Dates

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

Sunset Date

There is no sunset date. The Department monitors regulations through its Quality Control and Corrective Action agencies.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Department of Public Welfare, Edward J. Zogby, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081, within 30 days after the publication in the *Pennsylvania Bulletin*. Comments received within the 30 calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments received after the 30-day comment period will be considered for subsequent revisions of these regulations.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice Users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 25, 2002, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department 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 the Commission has any objections to any portion of the proposed amendments, it will notify the Department within ten 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 Act specifies detailed procedures for review, prior to final publication of the final-form regulations, of objections raised by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-478. No fiscal impact; (8) recommends adoption. These proposed revisions will result in savings totaling \$3.171 million to the 2002-2003 Medical Assistance—Long Term, Inpatient and Outpatient appropriations.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 178. RESOURCE PROVISIONS FOR CATEGORICALLY NMP-MA AND MNO-MA

Subchapter A. GENERAL PROVISIONS FOR MA RESOURCES COMMON TO ALL CATEGORIES OF MA

GENERAL PROVISIONS FOR MA RESOURCES

§ 178.2. Definitions.

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

* * * * *

CSMMNA—Community Spouse Monthly Maintenance Needs Amount—The income needed by the community spouse to prevent the community spouse from being impoverished according to Federal standards. This figure is based on the community spouse's monthly shelter expense and the minimum and maximum monthly maintenance need allowances.

* * * * *

Excess shelter amount—The resulting amount of the community spouse's monthly shelter expense that exceeds the shelter expense allowance.

* * * * *

MAMMNA—Maximum Monthly Maintenance Need Allowance—The maximum amount of income permitted to be protected to prevent the community spouse from being impoverished, as established under section 1924(a)(3)(c) of the Social Security Act (42 U.S.C.A. § 1396r-5(d)(3)(c)). A revision to the amount required by Federal law and regulations is published annually as a notice in the *Pennsylvania Bulletin*.

* * * * *

MIMMNA—Minimum Monthly Maintenance Need Allowance—The minimum amount of income permitted to be protected to prevent the community spouse from being impoverished, as established under section 1924(d)(3)(A) and (B), which is 1/12th of 150% of the official income poverty limit for a family of two. A revision to the amount required by Federal law and regulations is published annually as a notice in the *Pennsylvania Bulletin*.

MMNA—Monthly Maintenance Need Allowance—The amount of income that the institutionalized spouse can contribute to the community spouse.

Monthly shelter expense—The monthly cost for housing, including:

(i) Rent, mortgage payment, including principal and interest, property taxes and property insurance.

(ii) Maintenance charge for a condominium or cooperative less the utility allowance described in subparagraph (iii).

(iii) One of the two standard utility allowances (SUAs) specified in § 501.7(a)(1) and (2) (relating to treatment of income).

(iv) Telephone allowance specified in § 501.7(a)(3).

(v) Homeless shelter allowance specified in § 501.7(a)(4).

* * * * *

Shelter expense allowance—Thirty percent of the minimum monthly maintenance need allowance. A revision to the amount required by Federal law and regulations is published annually as a notice in the *Pennsylvania Bulletin*.

* * * * *

Subchapter B. AGED-, BLIND- AND
DISABLED-RELATED CATEGORIES OF MA

DISPOSITION OF PROPERTY AND FAIR
CONSIDERATION PROVISIONS FOR THE AGED-,
BLIND- AND DISABLED-RELATED CATEGORIES OF
MA

§ 178.104. Disposition of assets and fair consider-
ation provisions for transfers on or after July 30,
1994.

* * * * *

(d) The [number of months] period of ineligibility for [the institutionalized] an individual who is applying for, or receiving MA for NFC as defined in § 178.2, including services in an ICF/MR facility, or a level of care in an institution equivalent to NFC, or home or community-based waiver services furnished under a Title XIX waiver and who disposes of assets for less than FMV begins in the month of transfer if the date does not occur during an existing period of ineligibility. The period of ineligibility shall be [equal to the]:

(1) The number of months, including partial months, arrived at by dividing the total cumulative UV of all assets transferred by the individual or the individual's spouse on or after the look-back date divided by the average monthly cost to a private patient of NFC in effect in [the] this Commonwealth at the time of application.

(2) A partial month if the total cumulative UV of all assets transferred by the individual or the individual's spouse on or after the look-back date, divided by the average monthly cost to a private patient of NFC in effect in this Commonwealth at the time of application results in a fraction.

* * * * *

RESOURCE ELIGIBILITY REQUIREMENTS FOR
AN INSTITUTIONALIZED SPOUSE WITH A
COMMUNITY SPOUSE

§ 178.124. Resource eligibility for the institutional-
ized spouse.

* * * * *

(b) *Allowance revision.* The community spouse resource allowance may be revised if either spouse establishes at a Departmental hearing, based on evidence acceptable to the Department, that:

* * * * *

(2) [Income generated by the community spouse resource allowance is not sufficient to raise the community spouse's income to the monthly standard community spouse maintenance need allowance amount described in § 181.452(c)(2)(ii) (relating to posteligibility determination of income available from an MA eligible person toward his cost of care). The Department hearing officer will establish a resource amount adequate to assure that the community spouse has income up to the community spouse maintenance need allowance amount. This applies only if the institutionalized spouse actually gives the community spouse maintenance need allowance to the community spouse.] Additional monthly income is needed for the community spouse and is calculated as follows:

(i) The community spouse's total gross monthly income is calculated by adding the following:

(A) The total gross monthly earned income includes earned income specified in §§ 181.91—181.96 (relating to types of earned income counted for the aged, blind and disabled categories).

(B) The total gross monthly unearned income includes unearned income specified in §§ 181.101—181.109 (relating to types of unearned income counted for the aged, blind and disabled categories). Interest and other income generated by the community spouse resource determined under § 178.123 are included as unearned income of the community spouse.

(ii) The monthly shelter costs of the community spouse are added together to arrive at a total monthly shelter expense.

(iii) If the total monthly shelter expense exceeds the shelter expense allowance, the excess shelter amount is added to the MIMMNA to arrive at the CSMMNA. The excess shelter amount plus the MIMMNA cannot exceed the MAMMNA except as provided in subparagraph (vii).

(iv) If the total monthly shelter expense is equal to or less than the shelter expense allowance, the MIMMNA is the CSMMNA.

(v) If the community spouse's total gross monthly income determined in subparagraph (i) is equal to or greater than the CSMMNA determined in subparagraph (iii) or (iv), the community spouse is not in need of an MMNA unless subparagraph (vii) applies.

(vi) If the community spouse's total monthly income determined in subparagraph (i) is less than the CSMMNA determined in subparagraph (iii) or (iv), the difference is the MMNA, unless subparagraph (vii) applies.

(vii) The MMNA may exceed the CSMMNA determined in subparagraph (iii) or (iv) if one of the following applies:

(A) A greater amount is ordered through a court order under section 1924(d)(5) of the Social Security Act (42 U.S.C.A. § 1396r-5(d)(5)).

(B) A greater amount is determined as a result of a Department hearing decision in which either spouse establishes that the community spouse needs income greater than the MMNA due to exceptional circumstances resulting in significant financial duress.

(viii) If the institutionalized spouse's total gross monthly income as described in § 181.452(a) (relating to posteligibility determination of income available from an MA eligible person toward cost of care) less allowable deductions in § 181.452(d) is not sufficient to raise the community spouse's income to the MMNA described in subparagraph (vi), or unless subparagraph (vii) applies, the resource allowance as determined under § 178.123 may be revised as follows:

(A) Through the fair hearing process, if the Department hearing officer establishes a resource amount adequate to assure that the community spouse has income up to the MMNA.

(B) If the institutionalized spouse actually gives the MMNA to the community spouse.

* * * * *

Subchapter C. TANF-RELATED AND GA-RELATED CATEGORIES OF MA

DISPOSITION OF PROPERTY AND FAIR

**CONSIDERATION PROVISIONS FOR THE [AFDC]
TANF- AND GA-RELATED CATEGORIES OF MA**

§ 178.174. Disposition of assets and fair consideration provisions for transfers on or after July 30, 1994.

* * * * *

(d) The [number of months] period of ineligibility for [the institutionalized] an individual who is applying for, or receiving MA for NFC as defined in § 178.2, including services in an ICF/MR facility, or a level of care in an institution equivalent to NFC, or home or community-based waiver services furnished under a Title XIX waiver and who disposes of assets for less than FMV begins in the month of transfer provided that the date does not occur during an existing period of ineligibility. The period of ineligibility shall be [equal to the]:

(1) The number of months, including partial months, arrived at by dividing the total, cumulative [uncompensated value] UV of the assets transferred by the individual or the individual's spouse, on or after the look-back date, divided by the average monthly cost to a private patient of [nursing facility services] NFC in effect in this Commonwealth at the time of application.

(2) A partial month if the total cumulative UV of all assets transferred by the individual or the individual's spouse on or after the look-back date, divided by the average monthly cost to a private patient of NFC in effect in this Commonwealth at the time of application results in a fraction.

* * * * *

CHAPTER 181. INCOME PROVISIONS FOR CATEGORICALLY NEEDED NMP-MA AND MNO-MA

Subchapter D. POSTELIGIBILITY DETERMINATION OF ELIGIBILITY FOR MA PAYMENT TOWARD COST OF CARE IN INSTITUTIONS

POSTELIGIBILITY DETERMINATION PROVISIONS

§ 181.452. Posteligibility determination of income available from an MA eligible person toward the cost of care.

* * * * *

(d) The following amounts are deducted from the MA eligible person's total gross income identified in subsection (a) for persons in the aged, blind and disabled-related categories, or subsection (b) for persons in the TANF-related or GA-related categories and adjusted as applicable by the treatment of Veterans Administration benefits under subsection (c) for all MA eligible persons in the following order:

* * * * *

(5) The following medical expenses which are not subject to payment by a third party are deducted in the calendar month the medical expenses are paid[.]:

* * * * *

(iii) [Expenses paid by the MA eligible person for necessary] Necessary medical or remedial care recog-

nized under State statutes or regulations but not covered under the MA Program, **subject to a total deduction limit of \$10,000.**

[(6) An amount for maintenance of a single MA eligible person's home if a physician has certified that he is likely to return to his home within a 6-month period from the date he entered the facility. When this deduction is given, it may not be deducted for more than one 6-consecutive month period. The maintenance need amount for the single person is the MA income limit for one person in Appendix A. A home is defined as the residence maintained by the MA eligible person before he entered the facility and to which he plans to return. If a person is discharged and subsequently returns to a facility, the single MA eligible person is eligible for a new 6 consecutive month period for this deduction if a physician certifies that the person is likely to return to his home within a 6-month period from the date of admittance to the facility.]

* * * * *

[Pa.B. Doc. No. 02-1735. Filed for public inspection October 4, 2002, 9:00 a.m.]

[55 PA. CODE CH. 181]

Income Provisions for Categorically Needy NMP-MA and MNO-MA

The Department of Public Welfare (Department) proposes to amend Chapter 181 (relating to income provisions for categorically needy NMP-MA and MNO-MA) under sections 201(2), 403(b), 441.1 and 442.1 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b), 441.1 and 442.1); section 1902(a)(10)(A) and (C) and (17) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A) and (C) and (17)); and Federal regulations for optional Medical Assistance (MA) coverage and financial requirements found in 42 CFR 435.301, 435.601, 435.602 and 435.831.

Purpose

The purpose of this proposed rulemaking is to eliminate Non-Money Payment (NMP) spend-down and to limit the use of unpaid medical expenses of an applicant or recipient as a deduction for MA in determining Medically Needy Only (MNO) Spend-down eligibility. This proposed rulemaking provides that a medical expense may not be deducted if it was incurred before the first calendar day of the third month preceding the month of application.

Background

The Department is committed to administering an efficient, effective MA program that ensures access to quality health care for this Commonwealth's most vulnerable citizens. Notwithstanding this commitment, the Department must make changes to the MA Program to address the increasing fiscal demands.

Over the past year, the Commonwealth, as well as many other states, has experienced a significant increase in costs under the MA Program. No immediate relief is in sight. This fiscal pressure has required states to examine closely all expenditures and evaluate and prioritize what programs can continue to be fully funded.

The Department has taken steps to contain costs in past years, through the implementation of managed care

and the institution of management controls to avoid payments for services which are not medically necessary. Despite these changes, expenses in the MA Program continue to grow.

MA is a means-tested Federal-State funded program designed to provide health care benefits to individuals with limited income and resources. While the Federal government provides a baseline of what eligibility groups must be covered and what services must be provided in order for states to receive Federal Financial Participation (FFP), states may choose to expand eligibility to include additional groups as well as provide additional services. Historically, the Commonwealth has adopted most of the eligibility and service options available under Federal law and exercised various options to use less restrictive methodologies to determine eligibility. As a result, the Commonwealth has one of the most generous MA Programs in the country.

In reviewing program areas to help reduce the significant growth in expenditures, the Department has compared its current MA Program requirements with the requirements the Federal government mandates as well as what other states provide. As a result of this comparison, options were identified that would bring the Commonwealth's program more in line with the Federal baseline as well as closer to what other states provide.

Despite the increasing cost, the Department, unlike its counterparts in other states, has not limited benefits. Instead, the Commonwealth's approach has been to try to protect benefits for those in greatest financial need while looking at those areas of the program where individuals have some existing income or resources to pay for at least part of their care. The Department recognizes that taking steps to reduce benefits causes concern. The basis of this concern is that the proposed changes to eliminate NMP spend-down and limit the use of an unpaid medical expense will result in approximately 7,196 individuals losing MA under the current NMP spend-down provisions and approximately 14,802 individuals losing MA under the current MNO provisions. However, taking less drastic action at this point to minimize growth now will hopefully mitigate the need to limit benefits to the Federally-mandated eligibility groups.

The Department's NMP spend-down provisions are not Federally mandated. Eliminating these provisions will allow the Department to continue to provide services to the population that must be served to assure FFP. Additionally, by limiting the retroactive period from which MNO clients can claim an income deduction for past medical expenses, the Department can further cut costs to assure continued benefits to the Federally-mandated eligibility groups.

Under the current regulations, an individual not eligible for MA due to having net income in excess of the NMP or MNO income limit can qualify for MA benefits by spending down the excess income on medical expenses. Unpaid medical expenses can be deducted from an applicant's or recipient's income as long as those expenses meet certain criteria. The unpaid medical expense must: 1) not be subject to payment by a third party; 2) not be paid by MA, once MA is authorized; 3) be the legal obligation of a member of the applicant or recipient group; 4) have a verified amount and date of service; and 5) not have been used in a prior MA eligibility determination.

Current regulations do not limit when the medical expense being used in the eligibility determination was

incurred. As a result, the medical expense could have been incurred several years ago. This proposed rulemaking will limit the time period of an unpaid medical expense to those expenses incurred on or after the first calendar day of the third month preceding the month of application.

Need for Proposed Rulemaking

This proposed rulemaking is necessary to revise the MA eligibility requirements for applicants and recipients requesting MA to address the significant growth in costs of the MA Program.

Summary of Requirements

1. *Sections 181.11(d), 181.13 and 181.21(b) and (c).* These provisions propose deletion of references and cross references to NMP spend-down and deletion of eligibility requirements for that program.

2. *Sections 181.12(c)(2) and 181.14(d)(1)(v).* These provisions propose amendments to add language that indicates that unpaid medical expenses cannot be used as a deduction if the date of service is earlier than the first calendar day of the third month preceding the month of application and to remove language that permits expenses from other time periods to be used as a deduction.

Affected Persons and Organizations

This proposed rulemaking applies to applicants and recipients who apply for or receive MA benefits under NMP or MNO spend-down. The individuals affected by the elimination of NMP Spend-down will automatically be reviewed for MNO MA or Medical Assistance for Workers with Disabilities (MAWD) benefits before termination. The Department implemented MAWD by public notice at 32 Pa.B. 289 (January 12, 2002). A separate proposed rulemaking will be published to codify MAWD. Additionally, these individuals may be eligible for the Insurance Department's Children's Health Insurance Program (CHIP) or adultBasic Program or the Department of Aging's Pharmaceutical Assistance Contract for the Elderly (PACE) or PACE Needs Enhancement Tier (PACENET) if they meet the eligibility requirements of the specific program.

The changes to MNO spend-down will affect individuals who have unpaid medical expenses incurred before the first calendar day of the third month preceding the month of application and their eligibility was a result of using these unpaid medical expenses as a deduction when determining MA eligibility.

Accomplishments/Benefits

This proposed rulemaking will continue to allow the Department to provide MA benefits to this Commonwealth's Federally-mandated eligibility groups, while providing sound fiscal management of the Commonwealth's limited resources.

Fiscal Impact

Commonwealth

The Department has estimated savings for the MA Program by eliminating the spend-down eligibility group from NMP and the changes to the MNO spend-down process to be \$18.923 million in Fiscal Year 2002-2003 with the Commonwealth's savings to be \$9.272 million. The Commonwealth's savings will increase to approximately \$43.784 million per year by Fiscal Year 2006-2007.

The Department's MAWD program may experience an increase in enrollment and the CHIP and adultBasic Programs, under the Department of Insurance, and the

PACE/PACENET program, under the Department of Aging, may experience an increase in applications or enrollment.

Public Sector

There will be no impact on municipal or county governments.

Private Sector

There is potential for health care providers to have an increase in uncompensated care due to applicant or recipient ineligibility.

Paperwork Requirements

There are no additional forms or reports needed. There will be a reduction in the amount of medical expense paperwork the caseworker will handle, analyze and record.

Effective Date

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

Sunset Date

There is no sunset date. The Department monitors regulations through its quality control and corrective action agencies.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Edward J. Zogby, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081, within 30 days after the publication in the *Pennsylvania Bulletin*. Comments received within the 30-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments received after the 30-day comment period will be considered for subsequent revisions of these regulations.

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FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-477. No fiscal impact; (8) recommends adoption. Savings to the Medical Assistance Inpatient, Outpatient and Capitation Appropriations totaling \$9.272 million is expected with the promulgation of these regulations.

Annex

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 181. INCOME PROVISIONS FOR CATEGORICALLY NEEDY NMP-MA AND MNO-MA

Subchapter A. GENERAL PROVISIONS FOR MA INCOME COMMON TO ALL CATEGORIES OF MA CONTINUING AND RETROACTIVE ELIGIBILITY PROVISIONS FOR ALL CATEGORIES OF MA

§ 181.11. Continuing eligibility.

* * * * *

(d) For persons who do not meet the requirements of subsection (b) or (c), eligibility for continuing MA benefits exists if the applicant/recipient meets the eligibility requirements under § [**181.13 or**] **181.14** (relating to [**eligibility under NMP-MA spend-down; and**] eligibility under MNO-MA spend-down).

§ 181.12. Retroactive eligibility.

* * * * *

(c) For MNO-MA categories, income eligibility for retroactive MA benefits exists if one of the following applies:

* * * * *

(2) The applicant's/recipient's countable net income in the combined retroactive/prospective period, less medical expenses is equal to, or less than, the appropriate MNO-MA 6-month period income limits in Appendix F. Unpaid medical expenses [**that are not subject to payment by a third-party, which remain the legal obligation of the applicant/recipient, and are not to be paid for under the MA Program once MA is authorized**], incurred on or after the first calendar day of the third month preceding the month of application, and paid medical expenses, are deducted from the countable net income in the combined retroactive/prospective period as provided under § 181.14(e)(1)—(6) (relating to eligibility under MNO-MA spend-down) [**. This includes medical expenses incurred before the retroactive period.**] if the unpaid medical expenses meet the following conditions:

- (i) Are not subject to payment by a third party.
- (ii) Remain the legal obligation of the applicant/recipient.
- (iii) Are not to be paid for under the MA Program once MA is authorized.

§ 181.13. [Eligibility under NMP-MA spend-down] (Reserved).

[(a) Eligibility under NMP-MA spend-down is available to an applicant/recipient except for an applicant/recipient receiving skilled nursing care or intermediate care.

(b) The applicant/recipient shall meet the NMP-MA eligibility criteria, including the income criteria, to qualify for NMP-MA spend-down.

(c) The period of NMP-MA spend-down eligibility begins the day of the calendar month in which eligibility for NMP-MA spend-down is established and continues through the last day of that calendar month.

(d) Income eligibility for NMP-MA spend-down exists when the applicant's/recipient's:

(1) Countable net income less \$10 is equal to, or less than, the appropriate NMP-MA income limits in Appendix A for the aged, blind and disabled categories not receiving skilled nursing care or intermediate care.

(2) Countable net income less \$10 and medical expenses in subsection (e) is equal to, or less than, the appropriate NMP-MA income limits in Appendix A for the aged, blind and disabled categories not receiving skilled nursing care or intermediate care.

(3) Countable net income less \$10 is equal to, or less than, the appropriate NMP-MA income limits in Appendix C for the AFDC categories and the GA categories not receiving skilled nursing care or intermediate care.

(4) Countable net income less \$10 and medical expenses in subsection (f) is equal to, or less than, the appropriate NMP-MA income limits in Appendix C for the AFDC categories and the GA categories not receiving skilled nursing care or intermediate care.

(e) Deductible medical expenses include:

(1) Unpaid medical expenses, including those reasonably expected to be incurred, which meet the requirements in this paragraph. The unpaid medical expenses:

- (i) Are not subject to payment by a third-party.
(ii) Are not to be paid for under the NMP-MA Program once NMP-MA is authorized.

(iii) Are the legal obligation of the applicant/recipient.

(iv) Have not previously been used as a deduction in the determination of eligibility for a prior authorization of MA.

(2) Paid medical expenses which meet the requirements in this paragraph. The paid medical expenses:

- (i) Are paid in the calendar month for which spend-down is requested.
(ii) Have not previously been used as a deduction in the determination of eligibility for a prior authorization of MA.

(f) Medical expenses meeting the requirements in subsection (e) are deducted in the calendar month for which spend-down is requested in the following order:

(1) Medicare and other health insurance premiums including enrollment fees, deductibles or coinsurance charges incurred by the applicant/recipient regardless of whether they are paid or unpaid.

(2) Copayments or deductibles required by the Department. An applicant/recipient participating in the Copayment Program required by the Department is permitted a medical expense deduction for copayment expenses, subject to the copayment limit established by the Department.

(3) Expenses incurred—paid and unpaid—by the applicant/recipient for necessary medical and remedial services recognized under State statutes or regulations but not included in the NMP-MA Program.

(4) Expenses incurred—paid and unpaid—by the applicant/recipient for necessary medical and remedial services that are included in the NMP-MA Program.

(g) A monthly review of eligibility for NMP-MA spend-down is required except when the countable net income less \$10 is equal to, or less than, the appropriate income limit. A monthly review does not require a reapplication unless:

(1) The monthly review falls in the month that a complete reapplication of eligibility for NMP-MA is due.

(2) Three consecutive months have elapsed since the applicant/recipient requested a determination of eligibility for NMP-MA spend-down.]

§ 181.14 Eligibility under MNO-MA spend-down.

* * * * *

(d) Deductible medical expenses include:

(1) Unpaid medical expenses, including those reasonably expected to be incurred, which meet the requirements in this paragraph. The unpaid medical expenses:

* * * * *

(v) Have been incurred on or after the first calendar day of the third month preceding the month of application.

* * * * *

TREATMENT OF INCOME COMMON TO ALL CATEGORIES OF MA

§ 181.21. Treatment of actual and anticipated income and expenses.

* * * * *

(b) In determining continuing eligibility for MA, [except NMP-MA spend-down,] either the anticipated or actual income, or both, and work, personal and dependent care expenses to be received beginning with the first day of the calendar month containing the effective date of the application or reapplication are used, or the actual income and work, personal and dependent care expenses received 30 days before the calendar month of application or reapplication for MA may be projected to determine anticipated income and work, personal and dependent care expenses.

[(c) A combination of actual and anticipated income and expenses are considered to determine NMP-MA spend-down eligibility for MA. Actual income and expenses are used from the beginning of the calendar month to the day of the calendar

month in which eligibility for NMP-MA spend-down is established. Anticipated income and work, personal and dependent care expenses are used for the remainder of the calendar month.]

[Pa.B. Doc. No. 02-1736. Filed for public inspection October 4, 2002, 9:00 a.m.]

**[55 PA. CODE CH. 1121]
Pharmaceutical Services**

The Department of Public Welfare (Department) under section 201(2) of the Public Welfare Code (62 P.S. § 201(2)), proposes to amend Chapter 1121 (relating to pharmaceutical services) to read as set forth in Annex A.

Purpose

The purpose of this proposed rulemaking is to revise the rates paid by the Department to pharmacy providers governing payment for and dispensing of brand-name prescription drugs under the fee-for-service component of the Medical Assistance (MA) Program.

Need for the Proposed Rulemaking

The MA Program assures the availability of a wide array of medically-necessary healthcare services, supplies and equipment to approximately 1.5 million indigent persons. Prescription drugs are among the healthcare services covered by the MA Program. Drugs available from multiple manufacturers are often referred to as generic or multisource drugs. Drugs available from only one manufacturer that holds the patent for the drug product are referred to as single-source or brand-name drugs.

Under Federal law, the payment for prescription drugs reflects the state Medicaid agency's best estimate of the price generally and currently paid by pharmacy providers for a drug marketed or sold by a particular manufacturer in the package size of the drug most frequently purchased by providers (that is the estimated acquisition cost (EAC)) plus a reasonable dispensing fee. See 42 CFR 447.331(b) (relating to drugs: aggregate upper limits of payment). Prior to October 1995, the Department's regulations defined the estimated acquisition cost as the average wholesale price (AWP) for a drug. The AWP is the price assigned to the drug by its manufacturer as listed in publications universally used in the pharmaceutical industry. The listed AWP does not reflect discounts or rebates offered to pharmacy providers by manufacturers.

Until October 1995, the Department, unlike 40 other state Medicaid agencies and most other private sector third-party payors throughout this Commonwealth, paid for brand-name prescription drugs with no percentage discount off the AWP price. After determining that the payment rates of most of these other public and commercial payors reflected discounts equal to or greater than AWP minus 10%, and having determined as well that clients covered by those other payors enjoyed access to quality pharmacy services, the Department, consistent with its responsibility to assure clients' access to quality healthcare services at efficient and economical rates (see 42 U.S.C.A. § 1396a(a)(30)(A)), adopted AWP minus 10%, plus a \$4 dispensing fee as its fee-for-service payment policy for brand-name prescription drugs.

When the Department adopted the changes to its prescription payment policy in October 1995, it was aware that other payors reimbursed at discounts in

excess of 10% and that the Office of Inspector General (OIG) for the United States Department of Health and Human Services (DHHS) had issued reports in 1984 and 1989 of Nationwide studies it had conducted evidencing that pharmacies were purchasing brand-name drugs at discounts of AWP minus 15.5%. In November 1990, the Omnibus Budget Reconciliation Act of 1990, Pub.L. No. 101-508, 104 Stat. 1388, was passed which placed a 4-year moratorium on changes to states' reimbursement policies for prescription drugs. The Department, in adopting AWP minus 10% plus a \$4 dispensing fee, determined that although a greater discount off AWP could be justified (in addition to a lower dispensing fee), under the then-existing circumstances, the proposed rate represented an appropriate initial change to its payment policy.

During the past 7 years, additional studies, reports and data have been released relating to payment for and the dispensing of brand-name prescription drugs. The DHHS, OIG released two new studies relating to pharmacy reimbursement. A study was released in November 1998 by Pricewaterhouse Coopers (PwC) concerning the cost of filling a prescription and providing pharmacy services, including reasonable profits derived in the Commonwealth's Medicaid and Pharmaceutical Assistance Contract for the Elderly (PACE) Programs. The Legislative Budget and Finance Committee (LBFC) also released a report ("Long Term Care Pharmacy Dispensing Costs"), in December 2000, concerning "the relative adequacy of MA reimbursement for pharmacies dispensing medications to residents of long-term care nursing facilities compared to pharmacies dispensing to traditional retail customers."

The OIG report issued in April 1997, was entitled "Medicaid Pharmacy—Actual Acquisition Cost of Prescription Drug Products for Brand Name Drugs" (Report #A-06-96-00030). The OIG randomly selected ten states and the District of Columbia (California, Delaware, Florida, Maryland, Missouri, Montana, Nebraska, New Jersey, North Carolina and Virginia) and reviewed their drug purchases. The OIG combined the results of four categories of pharmacies, including rural-chain pharmacies, rural-independent pharmacies, urban-chain and urban-independent pharmacies, and estimated that pharmacies' actual acquisition cost for brand-name prescription drugs was a National average of AWP minus 18.3%.

In August 2001, the OIG issued results of another study ("Medicaid Pharmacy—Actual Acquisition Costs of Brand Name Prescription Drug Products" [A-06-00-00023]) involving an eight-state sample (Montana, Florida, Colorado, Indiana, Texas, Washington, West Virginia and Wisconsin) of the same types of pharmacies as in the prior study plus "nontraditional pharmacies" (that is nursing home pharmacies and hospital pharmacies). The nontraditional pharmacies were sampled separately. The OIG estimated that Nationally, the invoice price for brand-name drugs was an average of 21.84% below AWP for traditional pharmacies and 31.18% below AWP for nontraditional pharmacies.

The purpose of the pharmacy service study conducted by PwC for the Department and the Department of Aging, released in November 1998, was to determine the "full cost of filling a prescription and providing pharmacy services, including reasonable profits, in the Commonwealth's PACE/PACENET and MA programs." The study was conducted at the direction of the General Assembly. See section 2201-A of The Administrative Code of 1929 (71 P.S. § 581-13). The authors of the study estimated that pharmacy net income for the dispensing of MA fee-for-service claims in 1997 was minus \$0.01 per claim

or -0.0% of acquisition costs and concluded that independent pharmacies are not disadvantaged by the MA payment relating to the cost of acquiring drugs. The estimate did not reflect additional income pharmacies receive from manufacturers in the form of rebates and discounts, as well as the sale of nonprescription items. The study noted that other third-party payors, unlike most state Medicaid agencies, paid pharmacies at AWP minus 12-14% for most brand-name drugs. It was also noted that the National Association of Chain Drug Stores issued a strong rebuttal to the findings contained in the HHS-OIG 1997 audit of actual acquisition costs.

The LBFC, in preparing its report, sent surveys to all long-term care providers in this Commonwealth. In its report, LBFC noted that 42% of the providers surveyed, serving 87% of the State's licensed nursing beds, responded to the survey. The LBFC concluded that there is "no reason to conclude that there are significant differences in drug acquisition costs for the retail pharmacies as a group and long-term care pharmacies." (See LBFC Report at p. 10).

The LBFC study recommended that the Department "should consider" adjusting the dispensing fee to long-term care pharmacies so as "to take into account the additional activities pharmacies are required to perform when dispensing to residents of long term-care facilities." (See LBFC Report at p. 10). Based on reported, nonverified cost information, the LBFC concluded that the "additional cost" (that is costs above what would be incurred in a retail pharmacy) for the long-term care dispensing amounted to \$2.87 per prescription.

The PwC study, relying on a 1998 study by the National Association of Chain Drug Stores, estimated that the average dispensing costs in 1997 were \$6.22 per claim in this Commonwealth, compared to a National average of \$6.06 per claim and a \$6.44 per claim average in the states contiguous to this Commonwealth. The PwC study also determined that the prevalent payment by state Medicaid program rates relating to dispensing fees fell within a range of between \$4.01-\$4.50.

As of September 1, 2002, the average dispensing fee paid by six contiguous state Medicaid programs for pharmacy services was approximately \$3.91 per claim and the average payment by the largest 15 state Medicaid programs (excluding Pennsylvania) was approximately \$4.30.

The Department, in setting payment rates for pharmacy services under the MA Program, seeks to assure the availability to MA clients of high quality pharmacy services, equal to that of the general population in the same geographic regions, at the best possible price. In proposing the changes in payment for and the dispensing of brand-name drugs, the Department has considered the concerns expressed by both retail and long-term care pharmacies that current payments for pharmacy services do not reflect the "costs" they incur in providing those services. The Department has taken into account the studies and reports noted in this Preamble and their review of the "profitability" of providing pharmacy services and consideration of accounting for rebates, discounts, manufacturer's promotions, and mix of prescriptions by payor, along with consideration of profitability from total pharmacy revenues (that is, nonprescription sales).

When the Department modified its payment rate from AWP to AWP minus 10% in 1995, the pharmacy industry predicted that the reduction in payment would restrict

recipient access to and the quality of pharmacy services. To date, there is no evidence that remotely suggests that the change in payment reduced access by MA clients to high quality pharmacy services anywhere in the State let alone resulted in less access to service than that enjoyed by members of the general public.

Since 1995, payment rates both Nationally and within this Commonwealth for brand-name drugs and dispensing fees have continued to fall. Pharmacy providers generally contend that the decreases in payments by third-party payors are unfair to them and adversely impact their customers. As the payor of pharmacy coverage for 1.5 million MA adults and children, the Department has a duty to act as a prudent purchaser while assuring access to service. In analyzing the data and reviewing the analyses of the data contained in the several reports and studies released during the past several years, a fair reading of that information supports a conclusion that private and public payors Nationally, regionally, and within this Commonwealth obtain access to pharmacy services for their members/enrollees at payments for brand name drugs that range from AWP -10% to AWP -21% and at dispensing fees that range from \$2 to over \$6. These ranges are also consistent with payment information disclosed by pharmacies in the course of litigation with the Department. The information disclosed by pharmacies establishes that they routinely are paid at rates well below AWP -10% plus \$4. Indeed, the larger commercial insurers pay in the range of AWP minus 15-16% plus a \$2 dispensing fee. Given these payment ranges, and taking into account providers' claims relating to the costs of providing services, the Department believes that its proposal to pay for brand-name drugs at AWP minus 15% plus a dispensing fee of \$4.25 per prescription, though higher than necessary to obtain access by client to quality pharmacy services, is consistent with its duty to assure access by MA clients to pharmacy services at rates that compare most favorably with those of other major payors, both public and private, of pharmacy services.

Summary of the Proposed Rulemaking

The Department proposes to amend Chapter 1121 as follows:

1. Section 1121.55 (relating to method of payment) revises the Department's payment formula to include the dispensing fee increase to \$4.25 for all MA prescriptions.
2. Section 1121.56 (relating to drug cost determination) contains the Department's proposed amendment to EAC as the AWP minus 15%.

Affected Organizations

Approximately 3,100 pharmacy providers enrolled in the MA Program and participating in the fee-for-service delivery system will be affected by the lower reimbursement rates.

Accomplishments/Benefits

The Commonwealth will benefit by aligning its payment policies for brand-name prescription drugs with that of other third-party payors.

Fiscal Impact

The Commonwealth

The application of the proposed revision to the EAC determination and the proposed increase in the dispensing fee for the balance of Fiscal Year 2002-2003 should result in a reduction of \$22,538,000 in total expenditures.

This reduction will represent a net savings of \$10,381,000 for FY 2002-2003 in State funds.

Political Subdivisions

There will be no fiscal impact on the political subdivisions as a result of this proposed rulemaking.

Private Sector

The proposed revision to the EAC determination with the proposed dispensing fee increase will result in an overall reduction in payments to all pharmacy providers enrolled in the MA Program who participate in the fee-for-service delivery system.

General Public

There will be no fiscal impact on the general public with this proposed rulemaking.

Paperwork Requirements

There will be no additional reports or new forms needed to comply with the proposed rulemaking, nor will there be additional legal, accounting or consulting assistance required to fulfill the requirements of these sections.

Effective Date

The effective date for the implementation of this proposed rulemaking is October 1, 2002.

Sunset Date

The effectiveness of the proposed rulemaking will be evaluated on an ongoing process. Necessary and appropriate changes will be made in response to letters and recommendations from other offices, agencies and individuals. Therefore, no sunset date has been set.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120 within 30 days after the date of publication of this notice in the *Pennsylvania Bulletin*. Comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments received after the 30-day comment period will be considered for any subsequent revisions of this proposed rulemaking.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (Voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 25, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department 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 rulemaking, it will notify the Department 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-form publication of the regulations of objections raised, by the Department, the General Assembly and the Governor.

HEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-479. No fiscal impact; (8) recommends adoption. These proposed revisions will result in savings of \$10,381,000 to the 2002-2003 Medical Assistance—Outpatient appropriation assuming an effective date of implementation of October 1, 2002.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1121. PHARMACEUTICAL SERVICES

PAYMENT FOR PHARMACEUTICAL SERVICES

§ 1121.55. Method of payment.

(a) The Department will pay a pharmacy for a compensable legend and nonlegend drug (after deducting the applicable copayment amount, as described in § 1101.63(b) (relating to payment in full)), the lowest of the following amounts:

(1) The estimated acquisition cost (EAC) for the drug, multiplied by the number of units dispensed, plus a \$[4] 4.25 dispensing fee.

(2) The State MAC for the drug, multiplied by the number of units dispensed, plus a \$[4] 4.25 dispensing fee.

* * * * *

(b) The Department will pay a pharmacy for a compensable compounded prescription at the lower of the cost of all ingredients plus a \$[5] 5.25 dispensing fee or the provider's usual and customary charge to the general public.

* * * * *

§ 1121.56. Drug cost determination.

(a) The Department will base its drug cost for compensable legend and nonlegend drugs on the lower of:

(1) The Estimated Acquisition Cost (EAC) established by the Department as the current AWP found in the Department's pricing service for the most common package size of that product minus [10%] 15%.

* * * * *

[Pa.B. Doc. No. 02-1737. Filed for public inspection October 4, 2002, 9:00 a.m.]

**ENVIRONMENTAL
QUALITY BOARD**

[25 PA. CODE CH. 93]

**Stream Redesignation; East Branch Codorus
Creek**

The Environmental Quality Board (Board) proposes to amend § 93.90 (relating to Drainage List O) to read as set forth in Annex A. This proposed rulemaking would

redesignate a portion of the East Branch Codorus Creek from Cold Water Fishes (CWF) to Warm Water Fishes (WWF) to reflect the appropriate designated use for this stream.

This proposed rulemaking was adopted by the Board at its meeting of September 17, 2002.

A. *Effective Date*

This proposed rulemaking is effective upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Water Supply and Wastewater Management, 11th Floor, Rachel Carson State Office Building, P. O. Box 8467, (717) 787-9637; or Michelle Moses, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available electronically through the Department of Environmental Protection's (Department) website (<http://www.dep.state.pa.us>).

C. *Statutory and Regulatory Authority*

This proposed rulemaking is made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402), which authorize the Board to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grants to the Board the power and duty to formulate, adopt and promulgate rules and regulations for the proper performance of the work of the Department. In addition, section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313) sets forth requirements for water quality standards and the Federal regulation in 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. *Background of the Amendment*

The Commonwealth's Water Quality Standards, set forth, in part, in Chapter 93 (relating to water quality standards), implement the provisions of sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act. Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The lower reaches of the East Branch Codorus Creek, including Lakes Redman and Williams, were evaluated in response to a rulemaking petition submitted by the York Water Company. The petition requested redesignation of the main stem of the East Branch Codorus Creek from the inlet of Lake Redman to the mouth from CWF to WWF. The petition contained extensive data on water quality and the fishery in this portion of the basin, including Lakes Redman and Williams.

The Department's evaluation involved review of data in the petition and data obtained from the Fish and Boat Commission (Commission). The data shows that Lake Redman, Lake Williams and the East Branch Codorus Creek downstream from Lake Williams support a WWF community. The existence of a warm water fishery in Lake Redman has been documented since 1970. Surveys

beginning in 1983 have shown a WWF community. The warm water fishery in the lower main stem was documented in 1996.

Based upon its review of the petition and the Departments' recommendation, the Board proposes to adopt the designations described in this Preamble and set forth in Annex A.

Copies of the Department's stream evaluation report for this waterbody are available from Edward R. Brezina whose address and phone number are listed in Section B.

The information presented in the report clearly indicates that the aquatic life existing use of the petitioned surface waters is WWF. The WWF existing use is less restrictive than its CWF designated use. In addition, the information in the report supports redesignation under § 93.4(b) (relating to Statewide water uses). This information indicates that the petitioned surface waters were designated in error in 1979 when the Board adopted the current regulatory CWF designated use. The Board is proposing that the less restrictive use be adopted based on the data that demonstrates the requirements of § 93.4(b) have been satisfied. Section 93.4(b) states that less restrictive designated uses than those currently designated for particular waters listed in §§ 93.9a—93.9z may be adopted when it is demonstrated that: (1) the designated use is more restrictive than the existing use; (2) the use cannot be attained by implementing effluent limits required under sections 301(b) and 306 of the Federal Clean Water Act (33 U.S.C.A. §§ 1311(b) and 1316) or implementing cost-effective and reasonable Best Management Practices for nonpoint source control; and (3) dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate the modification in a way that would result in the attainment of the use.

E. *Benefits, Costs and Compliance*

Executive Order 1996-1, "Regulatory Review and Promulgation," requires a cost/benefit analysis of the proposed rulemaking.

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from this proposed rulemaking because it will reflect the appropriate designated use and maintain the most appropriate degree of protection for this stream. In addition, the York Water Company will benefit by being able to meet projected future water demands and ensuring an adequate water supply for its customers. The change in designation would allow water withdrawn from the Susquehanna River to be pumped, as needed, into Lake Redman for water supplies.

2. *Compliance Costs*—Generally, the proposed rulemaking should have no fiscal impact on, or create additional compliance costs for, the Commonwealth or its political subdivisions. No costs will be imposed directly upon local governments by this recommendation.

Persons conducting or proposing activities or projects that result in new or expanded discharges to streams shall comply with the regulatory requirements relating to the designated use. Treatment costs are site-specific and depend upon the size of the discharge in relation to the size of the stream and many other factors.

3. *Compliance Assistance Plan*—The proposed rulemaking has been developed as part of an established program and is consistent with water quality standards requirements established by the Federal Clean Water Act and The Clean Streams Law. All surface waters in this

Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect designated water uses.

The proposed rulemaking will be implemented through the National Pollutant Discharge Elimination System permitting program since the stream use designation is a major basis for determining allowable discharge effluent limitations. These permit conditions are established to assure water quality criteria are achieved and designated uses are protected. New and expanded discharges with water quality-based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with designated water uses.

4. *Paperwork Requirements*—The proposed rulemaking should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions or the private sector. This proposed rulemaking is based on existing Department regulations.

F. *Pollution Prevention*

The water quality standards program is a major pollution prevention tool because the objective is to protect in-stream water uses.

G. *Sunset Review*

The proposed rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 24, 2002, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. In addition to the proposed amendment, IRRC and the Committees have been provided a detailed regulatory analysis form prepared by the Department, in compliance with Executive Order 1996-1. 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 amendment, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion of the proposed amendment to which an objection is made. The Regulatory Review Act specifies detailed procedures for review by the Department, the Governor and the General Assembly before publication of the final-form regulation.

I. *Public Comments*

Written Comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477. Express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301. Comments submitted by facsimile will not be accepted. The Board must receive comments by November 19, 2002 (within 45 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by November 19, 2002. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the proposed amendment will be considered. If sufficient interest is generated as a result of this publication, a public hearing or meeting, or both, will be scheduled at an appropriate location to receive additional comments.

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us. A subject heading of the proposal and return name and address must be included in each transmission. The Board must also receive comments submitted electronically by November 19, 2002.

DAVID E. HESS,
Chairperson

Fiscal Note: 7-379. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9o. Drainage List O.

Susquehanna River Basin in Pennsylvania

Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
4—East Branch Codorus Creek	Basin, PA 214 to [mouth] Inlet of Lake Redman	York	CWF	None
4—East Branch Codorus Creek	Main Stem, Inlet of Lake Redman to Mouth	York	WWF	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
5—Unnamed Tributaries to East Branch Codorus Creek	Inlet of Lake Redman to Mouth	York	CWF	None
5—Inners Creek	Basin	York	CWF	None
		* * * * *		

[Pa.B. Doc. No. 02-1738. Filed for public inspection October 4, 2002, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61 AND 65]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61 and 65 (relating to seasons, sizes and creel limits; and special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815). This proposed rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The proposed amendment to § 61.2 (relating to Delaware River and River Estuary) is published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

E. Summary of Proposal

(1) *Section 61.2.* Management (including regulations) of the Delaware River and Delaware Estuary fish stocks is somewhat complicated given that four state jurisdictions and Federal interests are involved. Over the years, major efforts have been made to promulgate consistent regulations across the four jurisdictions or at least those having the subject species. This was done not only for ease of enforcement but also to simplify matters for the angling public. As the status of fish populations changes, so does the need to address regulations, which has been the case with striped bass in the past 20 years or so.

Currently, the harvest of river herring, which include alewife (*alosa pseudoharengus*) and blueback herring (*alosa aestivalis*), in the Delaware River is unregulated in this Commonwealth. There are no restrictions because there was little angling activity on these fish due to low abundance, other more sought after species and the like. Efforts are presently underway to restore herring runs in select tributaries in Chester County. In addition, with the recent expansion of the striped bass population and sport fishery on the New Jersey coast and in the Delaware River and Estuary, river herring have become a very popular live bait. The market for individual live herring has been reported as high as \$5 per fish. Even though New Jersey has a 50 herring daily limit, anglers are coming into this Commonwealth, purchasing a fishing license, catching herring and then returning to New Jersey to sell their catch. Biological and law enforcement staff in New Jersey and this Commonwealth believe that uniform regulations would be in the best interest of the angling public and management of herring stocks.

New Jersey is proposing to reclassify river herring as a bait fish, which would limit daily harvest to 35. The Commonwealth has been requested to consider imposing a similar daily creel limit. The Commonwealth and New Jersey historically have worked together to insure that harvest regulations accomplish common management goals and are consistent between states on our common border water.

Accordingly, the Commission proposes that § 61.2 be amended to establish a daily limit of 35 for river herring (alewife and blueback herring) in the Delaware River, Delaware Estuary and Delaware River/Estuary tributaries from the mouths upstream to the limit of tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, PA. At a future Commission meeting, staff will be able to advise the Commission regarding the outcome of the New Jersey action on this matter as well as preliminary results from the ongoing angler use and harvest survey on the Delaware River/Estuary, particularly if a more restrictive limit is warranted. The Commission proposes to amend this section to read as set forth in Annex A.

(2) *Section 65.24.* Lake Winola (formerly Breeches Pond) is a natural lake in Overfield Township, Wyoming County. Years ago a concrete and earth filled dam 13 feet high was constructed across the outlet resulting in the current 198 acre pool. Lake Winola has a maximum depth of 66 feet, a mean depth of 30 feet and a surface total alkalinity of 38 parts per million. The Commission manages the lake as a warm water/cool water fishery with seasonal trout fishing opportunities provided by the stocking of adult size trout. An important sportfish, largemouth bass, have received attention from the Area Fisheries Manager with regard to attempts to improve

growth rates and overall size structure in the population. Previous efforts centered on efforts to establish other forage species, but those efforts had little impact on bass growth.

Based on three electrofishing samples (1991, 1995 and 2000), the Lake Winola largemouth bass population can be characterized as high density and slow growing. The growth rate, particularly for 2 years of age and older bass, was well below the State average. Anglers have reported high catch rates of bass with very few legal size individuals. Low relative weights of bass greater than 8 inches in length suggest that these fish are very vulnerable to angling. In addition, length frequency distribution indicates that the population size structure has been impacted by angler harvest.

Largemouth bass populations are typically managed using minimum length limits. As the minimum length limit increases, there is a tendency to stockpile increasing numbers of sublegal bass. Stockpiling is not a problem in a fast growing population but is undesirable in a slow growing high-density situation. For this reason, big bass special regulations as well as the current Statewide regulation are inappropriate for Lake Winola. Slot length limits are an option to improve the size structure of high density, slowing growing largemouth bass populations. The success of a slot limit depends on anglers willing to harvest subslot fish. The Commission is proposing a protected slot limit of 12 to 18 inches at Lake Winola. Harvest of smaller, more numerous bass should improve growth of older bass once they enter the 12 to 18 inch window. Also, opportunity will exist to harvest the occasional trophy size bass. The Commission proposes to amend § 65.24 to read as set forth in Annex A.

F. *Paperwork*

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

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

The proposed rulemaking will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-133. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.2. Delaware River and River Estuary.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Delaware River and to Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
RIVER HERRING (alewife and blueback herring)	Open year-round	No minimum	[No daily limit] 35
	* * *	* * *	

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
	* * * * *	

County
Wyoming

Name of Water
Lake Winola

Special Regulations
Bass—It is unlawful to take, catch, kill or possess bass that are 12 to 18 inches in length. The daily creel limit for bass less than 12 inches in length and greater than 18 inches in length is 6, only one of which may exceed 18 inches in length. Closed to all fishing from 12:01 a.m. March 1 to 8 a.m. the first Saturday after April 11.

[Pa.B. Doc. No. 02-1739. Filed for public inspection October 4, 2002, 9:00 a.m.]

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Biennial Renewal Fees and Examination Fees

The State Board of Certified Real Estate Appraisers (Board) proposes to amend § 36.6 (relating to fees) to read as set forth in Annex A.

Description of Proposed Rulemaking

Section 36.6 sets forth a schedule of fees charged by the Board. The proposed rulemaking would raise the biennial renewal fees for certified real estate appraisers and certified Pennsylvania evaluators from \$105 to \$225; establish a biennial renewal fee of \$225 for certified broker/appraisers; and delete the examination fees for certified real estate appraisers and certified Pennsylvania evaluators.

Background and Need for Proposed Rulemaking

a. New Biennial Renewal Fees

Section 9 of the Real Estate Appraisers Certification Act (REACA) (63 P. S. § 457.9) provides that the Board's biennial revenues from fees, fines and civil penalties shall meet or exceed the Board's biennial expenditures. Because fines and civil penalties historically account for a

small percentage of the Board's total revenues, the Board must generate most of its revenues from fees.

The Board's principal sources of fee revenues are the fees charged to certificateholders for biennial renewal of their certifications. The biennial renewal fees account for approximately 88% of the Board's fee revenues during each biennial renewal period. The biennial renewal fees defray general operating expenses and overhead—primarily in the areas of investigation, prosecution and enforcement—that are not susceptible to being apportioned to a specific segment of persons and entities regulated by the Board and, therefore, are borne equally by the entire regulated community.

The Board established biennial renewal fees of \$105 for certified real estate appraisers in 1992 and for certified Pennsylvania evaluators in 1993. These fees have not been raised since their adoption. Additionally, the Board has not yet established a biennial renewal fee for the recently created certification class of broker/appraiser, whose initial biennial renewal occurred in 1999. Meanwhile, the Board's annual expenses have risen steadily, from \$113,104.50 in FY93-94 to \$413,000 in FY00-01, with expenses for FY06-07 projected to be \$570,000.

According to an analysis prepared by the Department of State's Bureau of Finance and Operations (BFO), the Board's current biennial renewal fee structure is inadequate to meet the Board's revenue needs. Unless the biennial renewal fees are increased, the Board faces large deficits in upcoming years as reflected in the following projections made by the BFO in February:

Financial Status	FY01-02	FY02-03	FY03-04	FY04-05	FY05-06	FY06-07
Beginning Balance:	418,463.31	(39,153.83)	(96,775.46)	(407,400.56)	(445,275.46)	(787,900.46)
Revenue:	149,500	499,125	210,375	499,125	210,375	499,125
Prior Yr. Returned Funds:	0	0	0	0	0	0
Total Revenue:	568,013.31	459,971.17	113,599.54	91,724.54	(234,900.46)	(288,775.46)
Expenses:	445,000	506,000	521,000	537,000	553,000	570,000
Prior Yr. Expenses:	162,167.14	50,746.63	0	0	0	0
Remaining Balance:	(39,153.83)	(96,775.46)	(407,400.46)	(445,275.46)	(787,900.46)	(858,755.46)

To close the widening gap between the Board's projected revenues and expenses, the BFO recommended that the Board adopt uniform biennial renewal fees in an amount between \$200 and \$250 for the Board's certificateholders, effective with the biennial renewal period that begins July 1, 2003. The proposed biennial renewal fee of \$225—representing the midpoint of the

BFO's recommended range—would raise biennial renewal revenues by approximately \$621,000, from the current \$346,500 to \$967,500, according to the BFO's estimates. The BFO projects that these additional biennial revenues would enable the Board to have comfortable positive balances at the end of the next several fiscal years, including approximately \$180,600 at the end of FY03-04.

b. Deletion of Examination Fees

The examinations for certification as a real estate appraiser and certified Pennsylvania evaluator are developed, administered and graded by Assessment Systems, Inc. (ASI), an independent testing organization under contract with the Commonwealth. The Board has no role in establishing or collecting examination fees. Examination fees are established by contract between ASI and the Commonwealth and are collected from Board-approved examination candidates at ASI's testing centers. The Board proposes to discontinue the practice of periodically amending its regulations to publish updated schedules of

examination fees. Accordingly, the proposed rulemaking would delete all references to examination fees for certified real estate appraisers and certified Pennsylvania evaluators. The Board will continue to provide current examination fee information to examination candidates on its website.

Fiscal Impact

The proposed rulemaking will generate approximately \$621,000 in additional biennial renewal fee revenues, broken down as follows:

<i>Certification Class</i>	<i>No. of Renewing Certificateholders</i>		<i>Fee Increase</i>	<i>Additional Revenues</i>
General Appraiser	1,088	×	\$120	\$130,560
Residential Appraiser	1,700	×	\$120	\$204,000
Certified Pennsylvania Evaluator	512	×	\$120	\$ 61,440
Broker/Appraiser	1,000	×	\$225	\$225,000

Paperwork Requirements

The proposed rulemaking will require the Board to change its biennial renewal forms to reflect the new fees. The proposed rulemaking will not create additional paperwork requirements for the regulated community.

Effective Date

The proposed rulemaking will become effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*. The new biennial renewal fees will apply to certificateholders who renew certifications for the biennial renewal period beginning July 1, 2003.

Statutory Authority

Section 5(6) of the REACA (63 P. S. § 457.5(6)) authorizes the Board to establish fees for its operations. Section 9 of REACA requires the Board to establish fees by regulation and to ensure that revenues derived from fees, fines and civil penalties are adequate to cover the Board's expenditures over a biennial period. Section 9 of the Assessors Certification Act (63 P. S. § 458.9) authorizes the Board to establish renewal and other fees relating to certified Pennsylvania evaluators by regulation.

Compliance with Executive Order 1996-1

In accordance with Executive Order 1996-1, "Regulatory Review and Promulgation," the Board, in drafting and promulgating the proposed rulemaking, attempted to balance its statutory obligation to generate adequate revenues to support its operations against the objective to minimize the fiscal impact on the regulated community. The Board considers the proposed rulemaking to be both required by law and the least restrictive means of covering the cost of activities that the Board is required to perform.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 25, 2002, the Board submitted copies of this notice of proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Standing Committee on Consumer Protection and Professional Licensure, and the House Standing Committee on Professional Licensure. The Board also provided IRRC and the Committees with copies of a Regulatory Analysis Form and Fee Report Form prepared in compliance with Executive Order 1996-1. Copies of these forms are available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to the proposed rulemaking, it will notify the Board within 10 days of the close of the Committee's review period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures that permit IRRC, the General Assembly and the Governor to review any objections prior to final-form adoption of the proposed rulemaking.

Public Comment

The Board invites interested persons to submit written comments, suggestions or objections regarding the proposed rulemaking to Steven Wennberg, Counsel, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

GEORGE D. SINCLAIR,
Chairperson

Fiscal Note: 16A-7013. 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 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS
Subchapter A. GENERAL PROVISIONS

§ 36.6. Fees.

The following is the schedule of fees charged by the Board:

	*	*	*	*	*
<i>Certified Real Estate Appraisers</i>					
	*	*	*	*	*
[Examination fee					\$100]
	*	*	*	*	*

[Examination fee\$100]

Biennial renewal fee \$[105] 225

Certified Broker/Appraisers

* * * * *

Biennial renewal fee \$225

Certified Pennsylvania Evaluators

* * * * *

Biennial renewal fee \$[105] 225

* * * * *

[Examination fee\$200]

[Pa.B. Doc. No. 02-1740. Filed for public inspection October 4, 2002, 9:00 a.m.]

NOTICES

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking, 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 September 24, 2002.

BANKING INSTITUTIONS

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
9-18-02	Abington Savings Bank Jenkintown Montgomery County	Regency Towers 1001 East Road Willow Grove Montgomery County (Limited Service Facility)	Approved
9-18-02	Abington Savings Bank Jenkintown Montgomery County	12106-B Centennial Station Warminster Bucks County (Limited Service Facility)	Approved
9-23-02	Bank of Hanover and Trust Company Hanover York County	1 West Market Street York York County	Filed
9-23-02	Community Banks Millersburg Dauphin County	4501 Hanover Pike Manchester Carroll County Maryland	Filed

Branch Relocations/Consolidations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
9-18-02	Northwest Savings Bank Warren Warren County	<i>Into:</i> 121 West 26th St. Erie Erie County <i>From:</i> 3805 Peach Street Erie Erie County	Approved
9-18-02	Parkvale Savings Bank Monroeville Allegheny County	<i>To:</i> Brentwood Town Station Pittsburgh Allegheny County <i>From:</i> 4128 Brownsville Road Pittsburgh Allegheny County	Approved
9-23-02	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> 2001 Market Street Philadelphia Philadelphia County <i>From:</i> 2200-2202 Market Street Philadelphia Philadelphia County	Approved

Branch Discontinuances

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
9-18-02	Allegheny Valley Bank of Pittsburgh Pittsburgh Allegheny County	St. Francis Medical Parking Complex 4401 Penn Avenue Pittsburgh Allegheny County	Filed
9-24-02	S & T Bank Indiana Indiana County	Chestnut Ridge Plaza Route 22 East Blairsville Indiana County	Approved
9-24-02	S & T Bank Indiana Indiana County	Route 119 Black Lick Burrell Township Indiana County	Approved

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS**Branch Applications**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
9-24-02	Diamond Credit Union Pottstown Montgomery County	Corners at Broadcasting Ridge Wyomissing Berks County	Approved

PAUL H. WENTZEL, Jr.,
Acting Secretary

[Pa.B. Doc. No. 02-1741. Filed for public inspection October 4, 2002, 9:00 a.m.]

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

Emergency Shelter Grant Program

The Department of Community and Economic Development (Department), Center for Community Building, is anticipating applying for funding through the United States Department of Housing and Urban Development.

The Emergency Shelter Grant Program (program) is established under subtitle B of Title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C.A. §§ 11371—11378). The program authorizes grants for the rehabilitation or conversion of buildings for use as emergency shelters for the homeless, for the payment of certain operating expenses and essential services in connection with emergency shelters for the homeless and for homeless prevention activities. The program is designed to be the first step in a continuum of assistance to enable homeless individuals and families to move toward independent living as well as to prevent homelessness.

Local government entities must submit one copy of the application to the Customer Service Center, DCED, 4th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, in accordance with the Department's Single Application requirements. A copy of the application must also be sent to the appropriate regional office. The application window will open on October 14, 2002, and close at 5 p.m. on December 20, 2002. Applications received prior to or after these dates may not be considered for funding.

Application guidelines and instructions may be obtained by contacting the Center for Community Building in Harrisburg, (717) 787-5327 or the Department's regional offices. Persons with a disability who wish to submit an application in accordance with the provisions stated herein and who require assistance with the application and persons who require copies of this notice in an alternate format (large type, Braille and the like) should contact Edward Geiger, 4th Floor, Commonwealth Keystone Building, Harrisburg, PA 17120, (717) 787-5327 to discuss how the Department may best accommodate their needs.

The following is the listing of the Department's regional offices and the counties they serve:

Department of Community and Economic Development Regional Offices

Southeast
Bucks, Chester, Delaware, Montgomery and Philadelphia Counties

Department of Community and Economic Development
908 State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130
(215) 560-2256

Northeast
Berks, Bradford, Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne and Wyoming Counties

Department of Community and Economic Development
Suite 201, Samters Building
101 Penn Avenue
Scranton, PA 18503-2025
(570) 963-4571

Central

Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry, York, Bedford, Blair, Cambria, Centre, Clinton, Columbia, Fulton, Huntingdon, Juniata, Lycoming, Mifflin, Montour, Northumberland, Snyder, Somerset and Union Counties.

Department of Community and Economic Development
4th Floor, Commonwealth Keystone Building
Harrisburg, PA 17120
(717) 720-7300

Southwest

Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Washington and Westmoreland Counties

Department of Community and Economic Development
1405 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
(412) 565-5002

Northwest

Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Potter, Venango and Warren Counties

Department of Community and Economic
Development

1200 Lovell Place
Erie, PA 16503
(814) 871-4241

Main Office

Center for Community Building
Office of Community Development
4th Floor, Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-5327

SAMUEL A. MCCULLOUGH,
Secretary

[Pa.B. Doc. No. 02-1742. Filed for public inspection October 4, 2002, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS

NPDES APPLICATIONS

PART I PERMITS

Under the Federal Clean Water Act and The Clean Streams Law, the following parties have applied for an NPDES permit or to renew their current permit to discharge controlled wastewaters into the waters of this Commonwealth or to conduct other activities required by the NPDES permit. For renewal applications listed in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements. For all new permit applications, renewal application with major changes or applications for permits not waived by EPA, the Department, based upon preliminary reviews, also made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications listed in Section II. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement, to the office noted before the application within 30 days from the date of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. The comments 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 comment period, the Department's Water Management Program Manager will make a final determination regarding these applications. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The renewal application, including proposed effluent limitations and special conditions, is available on file. For new permit applications, information submitted with the applications is available on file. The information may be inspected and arrangements made for copying at the office indicated before the application.

Persons with a disability, who require an auxiliary aid, service, including TDD users or other accommodations to seek additional information, should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0070246	Parkland School District Kernsville Elementary School 2219 N. Cedar Crest Boulevard Allentown, PA 18104	North Whitehall Township Lehigh County	Jordan Creek 2-C	Y
PA0070491	Mahoning Valley Nursing and Rehabilitation Center 397 Hemlock Drive Lehighon, PA 18235-9640	Carbon County Mahoning Township	Stewart Creek 2B	Y

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0113778 Sewerage Nonpublic	Brookside Manor Associates 215 West Church Road Suite 105 King of Prussia, PA 19406-3207	Columbia South Centre Township	UNT to Susquehanna River 5D	Y
PA0112631 Sewerage	Allen Wargo 1746 Old Reading Rd. Catawissa, PA 17820	Roaring Creek Township Columbia County	UNT to Roaring Creek 5E	Y
PA0039241 Sewerage	United States Department of Justice P. O. Box 3500 White Deer, PA 17887-3500	Gregg Township Union County	UNT to Black Run 10C	Y

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0044041, Industrial Waste, **Fish and Boat Commission, Corry Fish Culture Station**, 1225 Shiloh Road, State College, PA 16801-8495. This proposed facility is located in Wayne Township, **Erie County**.

Description of Proposed Activity: treated fish hatchery wastewater.

The receiving streams, South Branch of French Creek and Spencer Creek, are in watershed 16 (French Creek) and classified for CWF.

For the purpose of evaluating effluent requirements for TDS, NO₂—NO₃, fluoride and phenolics, the existing/proposed downstream potable water supply considered during the evaluation is Borough of Cambridge Springs, located 38 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 1.78 MGD.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	10		20
Total Suspended Solids	30		60
NH ₃ -N			
(5-1 to 10-31)	1.5		3.0
(11-1 to 4-30)	4.5		9.0
Hydrogen Peroxide	0.132		0.264
Diquat Dibromide	0.039		0.078
Formaldehyde	0.58		1.16
Chloramine-T	0.021		0.042
pH	6.0 to 9.0 standard units at all times		

The proposed effluent limits for Outfall 002 based on a design flow of 0.382 MGD.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	10		20
Total Suspended Solids	30		60

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
NH ₃ -N (5-1 to 10-31)	2.0		4.0
(11-1 to 4-30)	6.0		12.0
pH	6.0 to 9.0 standard units at all times		

The EPA Waiver is in effect.

II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

Northeast Region: Water Management Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790.

PA0062821, Industrial, **Schuylkill County Municipal Authority**, 221 South Centre Street, P. O. Box 960, Pottsville, PA 17901. This proposed facility is located in Branch Township, **Schuylkill County**.

Description of Proposed Activity: Renewal of an NPDES Permit.

The receiving stream, West Branch of the Schuylkill River, is in the State Water Plan watershed #3A and is classified for CWF. The nearest downstream public water supply intake for Pottstown Borough Water Authority is located on Schuylkill River, 61 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.068 MGD.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>
Total Suspended Solids			30.0	60.0
Total Iron			2.0	4.0
Total Aluminum			4.0	8.0
Total Manganese			1.0	2.0
Total Residual Chlorine			0.5	1.0

Southcentral Region: Water Management Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

PAG123562, CAFO, **Noah Sauder, Jr.**, 401 Elco Drive, Myerstown, PA 17067. This proposed facility is located in Jackson Township, **Lebanon County**.

Description of Proposed Activity: The Noah Sauder Jr. farm is an existing swine operation with a total AEUs of 330. An estimated quantity of total annual manure production is 1,347,000 gallons. The operation consists of 4,000 swine. The swine manure storage system includes a back-up system of a concrete tank with open top 52' diameter 12' depth with a holding capacity of 175,000 gallons. Each of the two barns have an individual 562,000 gallon capacity storage. Of the 1,424,000 gallons of manure produced on the farm, 70,000 gallons will be used on the farm with 1,354,000 gallons exported from the farm.

The receiving stream, UNT to Tulpehocken, is in the State Water Plan watershed 3-C and is classified for TSF.

The proposed effluent limits for the operation/activity include: Except for the chronic or catastrophic rainfall events defined as over the 25 year/24 hour rain storms, the CAFO general permit is a nondischarge NPDES permit. Where applicable, compliance with 40 CFR Federal effluent limitation guidelines is required. The general permit requires no other numeric effluent limitations and compliance with Pennsylvania Nutrient Management Act and The Clean Stream Law constitutes compliance with the State narrative water quality standards.

Application No. PA 0024708, Amendment No. 1, Sewage, **Municipal Authority of Union Township**, P. O. Box 5625, Belleville, PA 17004-9701. This application is for the amendment of an NPDES permit for an existing discharge of treated sewage to Kishacoquillas Creek in Watershed 12-A (Kishacoquillas—Jacks Creeks), in Union Township, **Mifflin County**.

The receiving stream is classified for CWF, recreation, water supply and aquatic life. For the purpose of evaluating effluent requirements for TDS, NO₂—NO₃, fluoride and phenolics, the existing downstream potable water supply intake considered during the evaluation was the United Water Company intake located on the Susquehanna River in Harrisburg. The discharge is not expected to impact any potable water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.65 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	28	45	56
Total Suspended Solids	33	50	66
NH ₃ -N (5-1 to 10-31)	5.4	XXX	10.8
(11-1 to 4-30)	14.1	XXX	28.2

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Phosphorus	Monitor and Report	XXX	XXX
Total Residual Chlorine	0.7	XXX	2.3
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform		200/100 ml as a geometric average	
(5-1 to 9-30)		6,600/100 ml as a geometric average	
(10-1 to 4-30)			

Individuals may make an appointment to review the Department files on this case by calling the File Review Coordinator at (717) 705-4732.

The EPA waiver is not in effect.

Application No. PA 0080322, Industrial Waste SIC 4953, **Greater Lebanon Refuse Authority**, 1610 Russell Road, Lebanon, PA 17046-1437. This facility is located in North Lebanon Township, **Lebanon County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated industrial waste.

The receiving stream, unnamed tributary of Swatara Creek, is in Watershed 7-D and classified for WWF, water supply and recreation and fish consumption. The nearest downstream public water supply intake for Pennsylvania American Water Company is located on the Swatara Creek, approximately 20 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 based on a design flow of 0.144 MGD are:

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
pH			From 6.0 to 9.0 inclusive		
Total Suspended Solids			30	60	75
Dissolved Oxygen			Minimum of 5.0 mg/l at all times		
CBOD ₅			20	40	50
NH ₃ -N					
(5-1 to 10-31)			2.5	5.0	6.2
(11-1 to 4-30)			7.5	15.0	22.5
Total Phosphorus			2.0	4.0	5.0
Total Aluminum			3.5	7.0	8.7
Total Iron			1.9	3.8	4.7
Total Manganese			1.2	2.4	3.0
Total Selenium					
(Using Method 270.2)			0.006	0.012	0.015
Total Thallium					
(Using Method 279.2)			0.002	0.004	0.005
Total Mercury					
(Using Method 245.1)			0.000064	0.000128	0.000160
Acrolein					
(Using Method 603)			0.0012	0.0024	0.0030
Acrylonitrile					
(Using Method 603)			0.0002	0.0004	0.0005

In addition to the effluent limits, the permit contains the following major special conditions:

1. Requirements for stormwater outfalls.
2. Requirements for limits at or below detection limits.

Individuals may make an appointment to review the Department files on this case by calling the File Review Coordinator at (717) 705-4732.

The EPA waiver is in effect.

Application No. PA 0246867, Sewage, **Allen McCormack**, 500 North Lockwillow Avenue, Harrisburg, PA 17112. This facility is located in Reed Township, **Dauphin County**.

Description of activity: The application is for issuance of an NPDES permit for a new discharge of treated sewage.

The receiving stream, Susquehanna River, is in Watershed 6-C and classified for WWF, water supply and recreation and fish consumption. The nearest downstream public water supply intake for United Water Company is located on Susquehanna River, approximately 10 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.0018 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	50
Suspended Solids	30	60
Total Residual Chlorine	1.5	2.5
Dissolved Oxygen	Minimum of 5.0 at all times	
pH	From 6.0 to 9.0 inclusive	
Fecal Coliform	200/100 ml as a geometric average	
(5-1 to 9-30)	100,000/100 ml as a geometric average	
(10-1 to 4-30)		

Individuals may make an appointment to review the Department files on this case by calling the File Review Coordinator at (717) 705-4732.

The EPA waiver is in effect.

Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.

PA0228541, Industrial Waste, **The Pennsylvania State University**, 101-P Physical Plant Building, University Park, PA 16802-2116. This proposed facility is located in College Township, **Centre County**.

Description of Proposed Activity: Groundwater remediation system for the Alpha Fire Training Site. System consists of groundwater extraction wells, an equalization tank and an air stripper.

The receiving stream, Big Hollow, is in the State Water Plan watershed 9C and is classified for CWF. Downstream waters, Spring Creek, are classified for HQ-CWF. The nearest existing downstream public water supply intake for Pennsylvania American Water Company, located on West Branch Susquehanna River at Milton, PA, is 98.2 river miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0072 MGD.

<i>Parameter</i>	<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Total Suspended Solids	10	15	25
Total Iron	1.5	2.3	3.7
Oil and Grease	10	15	25
Benzene	0.001	0.0015	0.0025
Toluene	0.001	0.0015	0.0025
Ethyl Benzene	0.001	0.0015	0.0025
Total Xylenes	0.001	0.0015	0.0025
Cis-1,2-dichloroethene	0.001	0.0015	0.0025
Trans-1,2-dichloroethene	0.001	0.0015	0.0025
Methylene Chloride	0.001	0.0015	0.0025
Naphthalene	0.001	0.0015	0.0025
Tetrachloroethene	0.001	0.0015	0.0025
Trichloroethene	0.001	0.0015	0.0025
Vinyl chloride	0.0001	0.00015	0.00025
pH	6.5 to 9.0 (standard units)		

In addition to the effluent limits, the permit contains the following major special conditions:

1. Compliance schedules for effluent limits and monitoring requirements.
2. Submission of Discharge Monitoring Reports.
3. Changes to discharge requirements.
4. Dry stream discharge requirements.
5. Solids waste disposal requirements.
6. Requirements for other generated wastewaters.
7. Results less than detection levels.
8. Air quality requirements.
9. Easement requirements.

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; (412) 442-4000.

PA0000647, Industrial Waste, SIC 8731, **Crucible Research, Division of Crucible Materials Corporation**, 6003 Campbells Run Road, Pittsburgh, PA 15205-1022. This application is for renewal of an NPDES permit to discharge treated process water and untreated cooling water and stormwater from the Crucible Research facility in Robinson Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Campbells Run, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is West View Water Company, located on the Ohio River, over 15 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.0096 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Oil and Grease			15		30
Temperature (°F)					110
pH	not less than 6.0 nor greater than 9.0				

Other Conditions: No net addition of pollutants to cooling water, thermal conditions for cooling water, priority pollutant analysis, chemical additives, solids disposal, control floating solids, stormwater conditions, Part II limits superseded, control of dilution and specific waste streams and biannual sampling or training.

Outfall 101: existing discharge, design flow of 0.0052 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Total Suspended Solids			20		50
Copper			1.0		2.5
Cyanide			0.12		0.30
Lead			0.20		0.50
Chromium, Total			0.5		1.25
Iron, Total			4.0		10.0
Oil and Grease			12		30
Mercury	Monitor and Report				
pH	not less than 7.5 nor greater than 10.0				

Outfall 201: existing discharge, design flow of 0.0044 MGD.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
pH	Flow to consist solely of uncontaminated noncontact cooling water. not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

PA0034185, Sewage, **Kenneth Hurlbut**, 4751 Kendor Drive, Lower Burrell, PA 15068. This application is for amendment of an NPDES permit to discharge treated sewage from High Meadows MHP STP in Allegheny Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of the Allegheny River, which are classified as a WWF existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Clearview Water Supply Company.

Outfall 001: Existing discharge, new design flow of 0.0265 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	25			50
Suspended Solids	30			60

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			3.3
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			
Dissolved Oxygen	not less than 3.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0092487, Sewage, **Nino Barsotti**, Star Route, Mt. Pleasant, PA 15666. This application is for renewal of an NPDES permit to discharge treated sewage from the Nino Barsotti Restaurant STP in Bullsken Township, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of Jacobs Creek, which are classified as a WWF 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 McKeesport Municipal Water Works.

Outfall 001: existing discharge, design flow of 0.007 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 ₅	25			50
Suspended Solids	30			60
Ammonia Nitrogen (5-1 to 10-31)	10.0			20.0
(11-1 to 4-30)	20.0			40.0
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			3.3
(10-1 to 4-30)	10,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0094838, Sewage, **Glades Pike Estates**, 1247 Trent Road, Somerset, PA 15501. This application is for renewal of an NPDES permit to discharge treated sewage from Glades Pike Estates STP in Somerset Township, **Somerset County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as West Branch of Coxes Creek, which are classified as a WWF 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 Ohiopyle Borough Municipal Water Works.

Outfall 001: existing discharge, design flow of 0.015 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 ₅	25			50
Suspended Solids	30			60
Ammonia Nitrogen (5-1 to 10-31)	15.0			30
(11-1 to 4-30)	25.0			50
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			1.9
(10-1 to 4-30)	17,000/100 ml as a geometric mean			
Total Residual Chlorine	.8			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0097195, Sewage, **Kiski Area School District**, 200 Poplar Street, Vandergrift, PA 15690-1491. This application is for renewal of an NPDES permit to discharge treated sewage from the Bell Avon formerly Bell Elementary School STP in Bell Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Wolford Run, which are classified as a WWF 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 Buffalo Township Municipal Authority.

Outfall 001: existing discharge, design flow of 0.005 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	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			

The EPA waiver is in effect.

PA0219282, Sewage, **Oak Grove Church of Christ**, 169 Ashwood Drive, Industry, PA 15052-1929. This application is for issuance of an NPDES permit to discharge treated sewage from the Oak Grove Church STP in Ohioville Borough, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary to South Branch Brady Run, which are classified as a TSF 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 Arco Chemical Company BV Plant.

Outfall 001: new discharge, design flow of 0.0019 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	5.5			11.0
(11-1 to 4-30)	16.5			33.0
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	5,000/100 ml as a geometric mean			
Total Residual Chlorine	1.2			2.9
Dissolved Oxygen	not less than 4 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

PA0238864, Sewage, **Dean Meyer**, 5502 Lunger Road, Erie, PA 16510. This proposed facility is located in Harborcreek Township, **Erie County**.

Description of Proposed Activity: A small flow treatment facility serving two proposed single residence dwellings.

The receiving stream, an unnamed tributary of Six Mile Creek, is in the Lake Erie watershed and classified for CWF, MF, aquatic life, water supply and recreation. For the purpose of evaluating effluent requirements for TDS, NO₂—NO₃, fluoride and phenolics. There is no downstream public water supply affected by this discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.0008 MGD.

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
CBOD ₅	10		20
Total Suspended Solids	20		40
Phosphorus	1.0		
Total Residual Chlorine	1.4		3.3
Dissolved Oxygen	greater than 3.0 mg/l at all times		
Fecal Coliform	200/100 ml as a geometric average		
pH	6.0 to 9.0 standard units at all times		

The EPA Waiver is in effect.

WATER QUALITY MANAGEMENT PERMITS

CONTROLLED INDUSTRIAL WASTE AND SEWAGE WASTEWATER

APPLICATIONS UNDER THE CLEAN STREAMS LAW

PART II PERMITS

The following permit applications or requests for plan approval have been received by the Department of Environmental Protection (Department).

Persons wishing to comment on any of the applications are invited to submit a statement to the office noted before the application within 15 days from the date of this public notice. Comments received within this 15-day comment period will be considered in making the final decision regarding the application. The comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department reserves the right to hold a public hearing if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation of the area. If no hearing is held, the Department's Water Management Program Manager will make a final determination regarding the applications after a complete review. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

A copy of the permit application or proposed plan is on file in the office indicated and is open to public inspection. Appointments to review the application may be made by contacting Records Management at the indicated telephone number.

I. Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

WQM Permit No. 1502416, Sewerage, **West Grove Borough**, 117 Rosehill Avenue, P. O. Box 61 West Grove, PA 19390. This proposed facility is located in West Grove Borough, **Chester County**.

Description of Proposed Action/Activity: Construction and operation to make modifications to existing sewage pump station.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

WQM Permit No. 0602410, Sewerage, **Exeter Township Berks County Authority**, 4975 DeMoss Road, Reading, PA 19606. This proposed facility is located in Exeter Township, **Berks County**.

Description of Proposed Action/Activity: Approval for the construction of a wastewater pump station to serve 30 proposed EDUs in the Glen Oley Farm development.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Application No. 465S81-A2, Sewerage, **Connellsville Area School District**, 125 North Seventh Street, Connellsville, PA 15425. Application for the construction and modification of the Springfield Township Elementary School Sewage Treatment Plant located in Springfield Township, **Fayette County**.

Application No. 2602404, Sewerage, **Menallen Township Supervisors**, 427 Searights Herbert Road, Uniontown, PA 15401. Application for the construction and operation of a sewerage extension and pump station to serve the Smock Hill area located in Menallen Township, **Fayette County**.

Application No. 2698401-A1, Sewerage, **Redstone Township Sewer Authority**, P. O. Box 751, Republic, PA 15475. Application for the expansion and modification of the existing wastewater facility and Merrittstown Pump Station to serve the areas of Luzerne Township located in Redstone Township, **Fayette County**.

Application No. 6302403, Sewerage, **Peters Township Sanitary Authority**, 3244 Washington Road, McMurray, PA 15317. Application for the construction and operation of a sewerage extension and pump station to serve Hidden Brook Manor located in Peters Township, **Washington County**.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WQM Permit No 2002413, Sewerage, **Jason E. and Lisa M. Carr**, 5759 Beaver Street, Springboro, PA 16435. This proposed facility is located in Conneaut Township, **Crawford County**.

Description of Proposed Action/Activity: This project is for a single residence sewage treatment plant.

WQM Permit No 1002410, Sewerage, **Jeffrey L. and Lorraine Domhoff**, 105 Ziegler Street, Zelenople, PA 16063. This proposed facility is located in Connoquenessing Township, **Butler County**.

Description of Proposed Action/Activity: This project is for a single residence sewage treatment plant.

WQM Permit No 4302415, Sewerage, **Dennis J. Downie**, 936 Excelsior Street, Pittsburgh, PA 15210. This proposed facility is located in Worth Township, **Mercer County**.

Description of Proposed Action/Activity: This project is for a single residence sewage treatment plant.

WQM Permit No 4302416, Sewerage, **Michael A. Sloan**, 6899 Dermond Road, Hermitage, PA 16148. This proposed facility is located in Lackawannock Township, **Mercer County**.

Description of Proposed Action/Activity: This project is for a single residence sewage treatment plant.

WQM Permit No 4302417, Sewerage, **Kimberly A. Burns**, 680 Stockbridge Drive, Erie, PA 16505. This proposed facility is located in Liberty Township, **Mercer County**.

Description of Proposed Action/Activity: This project is for a single residence sewage treatment plant.

WQM Permit No 2002421, Sewerage, **Webster A. and Cynthia C. Jones**, 776 Washington Street, Meadville, PA 16335. This proposed facility is located in Union Township, **Crawford County**.

WQM Permit No 2002419, Sewerage, **El-Ameen Majied**, 2122 Philadelphia Road, Springboro, PA 16435. This proposed facility is located in Beaver Township, **Crawford County**.

Description of Proposed Action/Activity: This project is for a single residence sewage treatment plant.

NPDES Stormwater Individual Permit

The following parties have applied for an NPDES permit to discharge stormwater associated with a construction activity into 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 conditions. These proposed determinations are tentative. Limitations are provided as erosion and sediment control best management practices which restrict the rate and quantity of sediment discharged.

Where indicated, the EPA Region III Administrator has waived the right to review or object to this proposed permit action under the waiver provision 40 CFR 123.24(d).

Persons wishing to comment on the proposed permit are invited to submit a statement to the appropriate Department Regional Office noted before 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 relevant facts upon which it is based. A public hearing may be held after consideration of comments received by the appropriate Department Regional Office during the 30-day public comment period.

Following the 30-day comment period, the appropriate Regional Office 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 sediment control plan for the earth disturbance activity, are on file and may be inspected at the office identified in this notice.

Persons with a disability who require an auxiliary aid, service or other accommodation to participate during the 30-day public comment period should contact the specified Regional Office. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Monroe County Conservation District: 8050 Running Valley Road, Stroudsburg, PA 18360, (570) 629-3060.

<i>NPDES No.</i>	<i>Applicant Name & Address</i>	<i>County & Municipality</i>	<i>Receiving Water/Use</i>
PAS10S116	The Great Lakes Co. 122 W. Washington Ave. 10th Floor Madison, WI 53703	Monroe County Pocono Township	Scot Run HQ-CWF

Northampton County Conservation District: Greystone Building, Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.

<i>NPDES No.</i>	<i>Applicant Name & Address</i>	<i>County & Municipality</i>	<i>Receiving Water/Use</i>
PAS10U180	Moravian Academy 7 E. Market St. Bethlehem, PA 18018	Northampton County Bethlehem Township	Monocacy Creek HQ-CWF

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act, the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on the permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding this application. Comment responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Permit No. 4502501, Public Water Supply.

Applicant **Stroudsburg Municipal Authority**
 Township or Borough Pocono and Paradise Townships
 Responsible Official Ken Brown, Manager
 Stroudsburg Municipal Authority
 410 Stokes Avenue
 East Stroudsburg, PA 18301
 Type of Facility PWS
 Consulting Engineer Russell D. Scott, P. E.
 R.K.R. Hess Associates, Inc.
 P. O. Box 268
 East Stroudsburg, PA 18301
 Application Received Date September 13, 2002
 Description of Action Construction of a waterline extension project is proposed and includes the construction of a regional booster pump station, finished water storage tank, an interconnecting transmission/distribution main and appurtenances.

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Permit No. 3602516, Public Water Supply.

Applicant **Borough of Lititz**
 Municipality Lititz Borough
 County **Lancaster**
 Responsible Official Sue Ann Barry, Borough Manager
 7 South Broad Street
 Lititz, PA 17543
 Type of Facility PWS
 Consulting Engineer David T. Lewis, P. E.
 ARRO Consulting Inc.
 270 Granite Run Drive
 Lancaster, PA 17601
 Application Received Date September 9, 2002
 Description of Action Addition of two 1-mg storage tanks, a new wastewater holding tank, new filters and building, new pump station and related piping and upgrading existing filters.

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Application No. Minor Amendment, Public Water Supply.

Applicant **Houtzdale Municipal Authority**
 Borough Houtzdale Borough

Responsible Official John W. Fudrow, Manager
 Houtzdale Municipal Authority
 731-I Kirk Street
 Houtzdale, PA 16651

Type of Facility PWS

Consulting Engineer Jeffrey Garrigan
 Uni-Tec Consulting Engineers, Inc.
 2007 Cato Avenue
 State College, PA 16801

Application Received Date July 23, 2002

Description of Action Change primary coagulant from alum to polyaluminum chloride.

Application No. Minor Amendment, Public Water Supply.

Applicant **East Haines Township Water Company**

Township Haines Township

Responsible Official Dwight Orndorf
 East Haines Township Water
 P. O. Box 46
 Woodward, PA 16882

Type of Facility PWS

Consulting Engineer Jason D. Wert, P. E.
 Herbert, Rowland & Grubic Inc.
 474 Windmere Drive
 State College, PA 16801

Application Received Date August 29, 2002

Description of Action Construction of a 0.05 million gallon water storage tank and appurtenances treatment

Application No. Minor Amendment, Public Water Supply.

Applicant **Pennsylvania-American Water Company**

Township Rush Township

Responsible Official Steven J. Seidl
 Pennsylvania-American Water Company
 800 West Hersheypark Drive
 Hershey, PA 17033

Type of Facility PWS

Consulting Engineer Bruce E. Juergens
 Pennsylvania-American Water Company
 800 W. Hersheypark Drive
 Hershey, PA 17033

Application Received Date September 19, 2002

Description of Action Replacement of the existing pumps in the Moshannon Valley Industrial Development Park Booster Station to provide water service to additional customers in Rush Township.

Application No. Minor Amendment, Public Water Supply.

Applicant **Irvona Municipal Authority**
 Borough Irvona Borough
 Responsible Official Donald Morrison
 Irvona Municipal Authority
 P. O. Box 247 Berwind Street
 Irvona, PA 16656

Type of Facility PWS
 Consulting Engineer Leo J. Drass, Jr.
 Gwin, Dobson & Foreman, Inc.
 3121 Fairway Drive
 Altoona, PA 16602

Application Received September 20, 2002
 Date

Description of Action Interconnect between Irvona Municipal Authority System and BCI Municipal Authority System

Application No. WA-17-593 B Water Allocation, Public Water Supply.

Applicant **Irvona Municipal Authority**
 Borough Irvona Borough
 Responsible Official Donald Morrison
 Irvona Municipal Authority
 P. O. Box 247 Berwind Street
 Irvona, PA 16656

Type of Facility PWS
 Consulting Engineer Leo J. Drass, Jr.
 Gwin, Dobson & Foreman, Inc.
 3121 Fairway Drive
 Altoona, PA 16602

Application Received September 20, 2002
 Date

Description of Action Subsidiary Water Allocation Permit for Irvona Municipal Authority system to purchase 1,000 gallons per day from BCI Municipal Authority System.

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Permit No. 3302503, Public Water Supply.

Applicant **Falls Creek Borough**
 117 Taylor Avenue
 Falls Creek, PA 15840

Township or Borough Falls Creek Borough and Washington Township, **Jefferson County**

Responsible Official Vance Oakes, Borough Manager

Type of Facility PWS
 Consulting Engineer Keller Engineers, Inc.
 420 Allegheny Street
 Hollidaysburg, PA 16648

Application Received September 4, 2002
 Date

Description of Action Extension of existing system to serve the Red Mill area including tank and booster station.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1**Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908)**

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of any Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the background standard, Statewide health standard, the site-specific standard, or who intend to remediate a site as a special industrial area, must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, or a combination of the cleanup standards, or who receives approval of a special industrial area remediation identified under the Act, will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the Act, there is a 30-day public and municipal comment period for sites proposed for remediation using a site-specific standard, in whole or in part and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, 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 the site, develop and implement a public involvement plan. Requests to be involved and comments, should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the Environmental Cleanup Program Manager in the Department Regional Office 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 Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Pennsylvania Department of Transportation Doylestown Maintenance Facility, Doylestown Borough, **Bucks County**. Peter R. Chronowski, Apex Environmental, Inc., 220 N. Park Rd., Reading, PA 19610, on behalf of Pennsylvania Department of Transportation, Lou Porrini, Maintenance Coordinator, 7000 Geerdes Blvd., King of Prussia, PA 19406, has submitted a Notice of Intent to Remediate soil contaminated with arsenic and lead. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate is anticipated to be published in *The Intelligencer* on October 1, 2002.

PECO Energy Company—Former Darby MGP Plant, Darby and Sharon Hills Borough, **Delaware County**. Ronald F. Carper, Jr., P. G., ENSR International, 2005 Cabot Blvd., Suite 100, Langhorne, PA 19047, on behalf of PECO Energy Co., Attn: Jennifer Sowers, 300 Front St., Bldg. 1, West Conshohocken, PA 19428, has submitted a Notice of Intent to Remediate soil and groundwater contaminated with inorganics, other organics and PAH. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in *The County Press* on September 23, 2002.

Holmesburg Shopping Center, City of Philadelphia, **Philadelphia County**. Nancy R. Repetto, Powell-Harpstead, Inc., 800 E. Washington St., West Chester, PA 19380, on behalf of Leon Silverman, Esq., Stein & Silverman, PC, 230 S. Broad St., Philadelphia, PA 19102, has submitted a Notice of Intent to Remediate soil contaminated with Fuel Oil No. 2. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Philadelphia Daily News* on September 16, 2002.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Former BOC Gases Site, East Petersburg Borough, **Lancaster County**. ENSR Corporation, 2005 Cabot Boulevard West, Suite 100, Langhorne, PA 19047, on behalf of BOC Gases, 575 Mountain Avenue, Murray Hill, NJ 07974, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with Fuel Oil No. 2 and PAHs. The applicant proposes to remediate the site to meet the site-specific standard requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lancaster Intelligencer Journal—New Era* on August 31, 2002.

Former Mobil Service Station AN788, Lower Paxton Township, **Dauphin County**. B & B Diversified Enterprises, Inc., 125 Analomink Street, East Stroudsburg, PA 18301, on behalf of Corner Associates, LLC, 4800 Linglestown Road, Harrisburg, PA 17112, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with MTBE and unleaded gasoline. The applicant proposes to remediate the site to meet the site-specific standard requirements. A summary of the Notice of Intent to Remediate was reported to have been published in the *Harrisburg Patriot* on August 24, 2002.

Reese Property, Myerstown Borough, **Lebanon County**. Onesky Engineering, Inc., 210 Carter Drive, Suite 8, West Chester, PA 19382, on behalf of Reese's Auto Sales, 422 West Lincoln Avenue, Myerstown, PA

17067, submitted a Notice of Intent to Remediate site soils contaminated with Fuel Oil No. 2. The applicant proposes to remediate the site to meet a combination of requirements for the statewide health and site-specific standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *Lebanon Daily News* on September 16, 2002.

Northcentral Region: Environmental Cleanup Program, 208 West Third Street, Williamsport, PA 17701.

Pennsylvania Department of Transportation Columbia County Maintenance Facility, Town of Bloomsburg, **Columbia County**. Apex Environmental, Inc., on behalf of Pennsylvania Department of Transportation District 3-0, 715 Jordan Avenue, Montoursville, PA 17754 has submitted a Revised Notice of Intent to Remediate site soil contaminated with MTBE, lead, leaded gasoline and unleaded gasoline. The applicant proposes to meet the Site-Specific Standard. A summary of the Revised Notice of Intent to Remediate was reported to have been published in the *Williamsport Sun-Gazette* on September 24, 2002.

MUNICIPAL WASTE GENERAL PERMITS

Application Received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and the Beneficial Use of Municipal Waste.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

General Permit Application No. WMGM019. Valley Forge Inc., 462 Glennie Circle, King of Prussia, PA 19406. The application is for the beneficial use and processing of municipal waste including: concrete crushing, mulch and wood processing, asphalt crushing, soil processing and leaf composting. Central Office received the application on April 5, 2002, and it was determined administratively complete on September 20, 2002.

Comments concerning the application should be directed to Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472. Persons interested in obtaining more information about the general permit application may contact the Division at (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to and approval or denial of the application.

RESIDUAL WASTE GENERAL PERMITS

Application Received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

General Permit Application No. WMGR087. Process Recovery Corp., 2909 Windmill Rd., Sinking Spring, PA 19608-1681. The application is for beneficial use of manufactured topsoil made from spent foundry sand and slag. The application was accepted by Central Office on September 18, 2002.

Comments concerning the application should be directed to Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to and approval or denial of the application.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

NEW 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.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the Regional Office identified in this notice. Persons interested in reviewing the application files should contact the appropriate Regional Office to schedule an appointment.

Persons wishing to receive a copy of the proposed Plan Approval or Operating Permit must indicate their interest to the Department Regional Office within 30 days of the date of this notice and must file protests or comments on a Proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department 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 the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the Regional Office identified. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121–143, the Federal Clean Air Act and regulations adopted under the Act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark Wejkszner, Acting New Source Review Chief, (570) 826-2531.

48-318-134: Bethlehem Contracting Co. (P. O. Box 40, Bath, PA 18014) for modification of paint spraying operations and associated air cleaning device in East Allen Township, **Northampton County**.

48-399-052: Bethlehem Contracting Co. (P. O. Box 40, Bath, PA 18014) for construction of a steel shot blast operation and associated air cleaning device in East Allen Township, **Northampton County**.

Southcentral Region: Air Quality Program, 909 Elmer-ton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.

36-05119A: Signature Custom Cabinetry, Inc. (434 Springville Road, Ephrata, PA 17522) for construction of a paint booth for coating wood furniture parts in Ephrata Township, **Lancaster County**.

36-05124: Guyon Industries, Inc. (1344 North Penryn Road, Manheim, PA 17545) for construction of a roll coater at its lumber prefinishing facility in Penn Township, **Lancaster County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

55-310-002A: National Limestone Quarry, Inc. (P. O. Box 397, Middleburg, PA 17842) for construction of several pieces of crushing, screening and similar equipment in an existing stone crushing plant in Franklin Township, **Snyder County**. The equipment is subject to Subpart OOO of the Federal Standards of Performance for New Stationary Sources.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Contact: Thomas Barsley, Chief, (215) 685-9428.

02156: Bro-Tech Corp. (150 Monument Road, Bala Cynwyd, PA 19004) for installation of an acid diluter at Purolite Co., 3620 G Street, City of Philadelphia, **Philadelphia County**.

02163: Naval Surface Warfare Center (5001 South Broad Street, Code 3501, Philadelphia, PA 10112) for installation of a 1,448 HP diesel engine in the City of Philadelphia, **Philadelphia County**.

02162: Defense Energy Support Center (8725 John J. Kingman Road, Fort Belvoir, VA 22060) for operating a skid mounted soil vapor treatment system with two 250 HP internal combustion engines at 2800 South 20th Street, City of Philadelphia, **Philadelphia County**.

02165: Sunoco, Inc. (R and M) (3144 Passyunk Avenue, Philadelphia, PA 19145) for installation of a boiler in the City of Philadelphia, **Philadelphia County**.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

46-0191C: Merck and Co., Inc. (351 North Sumneytown Pike, West Point, PA 19486) for modification of several combustion sources permitted under Plan Approval 46-0191A to reflect actual equipment that was installed, versus what the facility received approval for at the Upper Gwynedd Office Complex in Upper Gwynedd Township, **Montgomery County**. This facility is a Non-Title V facility. Modifications will result in an increase of NOx emissions of 3.47 tons per year. Increases of all other criteria pollutants will be less than 1.0 ton per year. The plan approval will contain monitoring/recordkeeping and operating requirements designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

09-0106A: UNIVAR USA, Inc. (previously Vopak USA, Inc.) (200 Dean Sievers Place, Morrisville, PA 19067) for installation and modification of nine organic liquids storage tanks at the chemical distribution facility in Morrisville, **Bucks County**. Organic liquids that will be stored include HAPs or VOCs. This installation and modification will result in the total emissions from the facility of less than: 25 tons per year of VOCs; 10 tons per year of individual HAPs; 25 tons per year of a combination of HAPs. The plan approval and operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

46-0005T: Merck and Co., Inc. (770 Sumneytown Pike, P. O. Box 4, West Point, PA 19486-0004) for installation of two 1,300 kW natural gas fired emergency generators at their West Point Plant in Upper Gwynedd Township, **Montgomery County**. The plan approval will subsequently be incorporated into the facility's Title V Operating Permit through an administrative amendment in accordance with 25 Pa. Code § 127.450.

Based on the information provided by the applicant and the Department's own analysis, the two emergency generators will emit 1.0 ton per year of NOx, 2.6 tons per year of carbon monoxide and 0.65 ton per year of VOCs.

To assure compliance with the applicable standards, the Department has placed the following conditions in the proposed Plan Approval:

A. The company shall limit the hours of operation of each emergency generator to 500 hours per year, calculated as a 12 month rolling sum.

B. The company shall install, operate and maintain the emergency generator in accordance with the manufacturer's specifications as well as good air pollution control practices.

C. The emergency generator shall only be used during electrical failures or to perform preventative maintenance.

The emergency generator shall not be used to supplement the primary power supply to the facility.

D. The company shall only combust natural gas in each generator.

E. The following air contaminant emission limits are approved for the 1,300 kW emergency generator.

i. NOx: 1.0 ton per year calculated as a 12 month rolling sum.

ii. CO: 2.6 tons per year calculated as a 12 month rolling sum.

iii. VOCs: 0.65 ton per year calculated as a 12 month rolling sum.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Michael Safko, Facilities Permitting Chief, (570) 826-2531.

48-399-051: Elementis Pigments, Inc. (1525 Wood Avenue, Easton, PA 18042-3186) for construction and operation of a product packing facility and associated air cleaning device in Wilson Borough, **Northampton County**. The particulate emissions from the fabric collector will not exceed the best available technology standard of 0.02 grain/DSCFT (0.75 ton per year). The operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements. The facility currently has a Title V Operating Permit No. 48-00018. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit through an administrative amendment at a later date.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: Muhammad Zaman, Facilities Permitting Chief, (570) 327-3637.

55-399-005: Professional Building Systems, Inc. (72 East Market Street, Middleburg, PA 17842) for construction of a modular home manufacturing facility including adhesive, surface coating and solvent usage operations in Middleburg Borough, **Snyder County**.

The modular home manufacturing facility is expected to result in actual emissions of 9.5 tons per year VOCs of which 6.0 tons per year will be HAPs and less than 1 ton per year of particulate matter.

The Department has determined that the modular home manufacturing facility will comply with all applicable regulatory requirements pertaining to air contaminant sources and the emission of air contaminants including the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12. The Department consequently intends to issue a plan approval for the respective modular home manufacturing facility.

The Department intends to place conditions in the plan approval to be issued pertaining to the operation and monitoring of the equipment. These conditions are intended to assure proper operation of the equipment as well as compliance with all applicable air quality regulatory requirements. The following is a summary of these conditions:

1. The use of all surface coatings (primers, stains, sealers, topcoats and the like), with the exception of "Duron Spray Enamel—Interior—Exterior" spray paint used for serial number marking and "Pro Kote Supreme Interior Latex Flat 901 White," shall not exceed a total of 310 gallons in any 12 consecutive month period.

2. The use of the surface coating "Pro Kote Supreme Interior Latex Flat 901 White" shall not exceed 22,000 gallons in any 12 consecutive month period.

3. The use of adhesive "SFA-66" shall not exceed 17,800 pounds in any 12 consecutive month period.

4. The use of adhesive "DCP-30" shall not exceed 9,150 pounds in any 12 consecutive month period.

5. The use of all PVC cement adhesive shall not exceed 300 gallons in any 12 consecutive month period.

6. The use of all caulk adhesives shall not exceed a total of 4,950 pounds in any 12 consecutive month period.

7. The use of adhesive "Accusil 100" shall not exceed 860 pounds in any 12 consecutive month period.

8. The use of "American Stone-Mix, Inc. Roof Cement" adhesive shall not exceed 60 gallons in any 12 consecutive month period.

9. The use of PVC primer shall not exceed 100 gallons in any 12 consecutive month period.

10. The use of "Duron Spray Enamel—Interior—Exterior" spray paint used for serial number marking and the like shall not exceed 90 gallons in any 12 consecutive month period.

11. The use of all cleaning solvents (with the exceptions of water and "Simple Green" solvent) shall not exceed 30 gallons in any 12 consecutive month period.

12. The VOC content of all surface coatings (primers, stains, sealers, topcoats and the like), with the exception of the spray paint used for serial number marking and "Pro Kote Supreme Interior Latex Flat 901 White," shall not exceed 0.1 pound VOC per pounds coating solids as applied and the HAP content shall not exceed 2.8% by weight as applied.

13. The VOC content of the surface coating "Pro Kote Supreme Interior Latex Flat 901 White" shall not exceed 2.0% by weight (0.021 pound VOC per pounds coating solids) as applied and the HAP content shall not exceed 0.0% by weight as applied.

14. The VOC content of "Duron Spray Enamel—Interior—Exterior" spray paint used for serial number marking shall not exceed 45.0% by weight as applied and the HAP content shall not exceed 45.0% by weight as applied.

15. The VOC content of adhesive "Macroplast UR-8225 BH" shall not exceed 0.0% by weight as applied and the HAP content shall not exceed 0.0% by weight as applied.

16. The VOC content of adhesive "Foamseal F2100A" shall not exceed 0.0% by weight as applied and the HAP content shall not exceed 0.0% by weight as applied.

17. The VOC content of "Draft Stop" compound shall not exceed 0.0% by weight as applied and the HAP content shall not exceed 0.0% by weight as applied.

18. The VOC content of "Accusil 100" adhesive shall not exceed 4% by weight as applied and the HAP content shall not exceed 0.0% by weight as applied.

19. The VOC content of adhesive "Speed Demon Acrylic Caulk—White" shall not exceed 8.4% by weight as applied and the HAP content shall not exceed 1.9% by weight as applied.

20. The VOC content of adhesive "Polyseamseal Paintable Acrylic with Silicone Caulk" shall not exceed 4.0% by weight as applied and the HAP content shall not exceed 4.0% by weight as applied.

21. The VOC content of adhesive "SFA-66" shall not exceed 38% by weight as applied and the HAP content shall not exceed 38% by weight as applied.

22. The VOC content of adhesive "DCP-30" shall not exceed 38% by weight, as applied and the HAP content shall not exceed 38% by weight as applied.

23. The VOC content of adhesive "Oatey Flowguard PVC Cement" shall not exceed 80% by weight as applied and the HAP content shall not exceed 5% by weight as applied.

24. The VOC content of adhesive "Oatey H.D. PVC Cement" shall not exceed 81% by weight as applied and the HAP content shall not exceed 1% by weight as applied.

25. The HAP content of the solvent "Whitlam PVC Primer" shall not exceed 72% by weight, as applied.

26. The VOC content of adhesive "Whitlam PVC Heavy Cement" shall not exceed 82% by weight as applied and the HAP content shall not exceed 32% by weight as applied.

27. The VOC content of adhesive "Whitlam PVC Transition Cement" shall not exceed 81% by weight as applied and the HAP content shall not exceed 37% by weight as applied.

28. The VOC content of "American Stone-Mix, Inc. Roof Cement" adhesive shall not exceed 30% by weight and the HAP content shall not exceed 30% by weight.

29. The VOC content of "Simple Green" solvent shall not exceed 1% by weight as applied and the HAP content shall not exceed 0.0% by weight as applied.

30. Only the following materials used in the subject operations shall contain acetone: "Oatey All-Purpose Cement," "Whitlam PVC Medium Cement" and "Duron Spray Enamel—Interior—Exterior." Use of acetone in any other materials shall require prior written approval from the Department.

31. No compounds (adhesives, surface coatings, solvents and the like) used at the facility shall contain formaldehyde.

32. The company shall obtain prior written approval from the Department before any VOC-and/or HAP-containing compounds not specifically identified in the application and supplemental materials submitted for plan approval are used at the facility.

33. The total facility-wide VOC emissions shall not exceed 10.0 tons in any 12 consecutive month period.

34. The total facility-wide HAP emissions shall not exceed 6.4 tons in any 12 consecutive month period.

35. All spray guns employed in surface coating operations shall be of either an airless or HVLP design.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

42-158F: Temple Inland Forest Products Corp. (Hutchins Road, Mt. Jewett, PA 16740) for modification of the particleboard flaking system for their Particleboard/MDF Plant in Sergeant Township, **McKean County**. The facility is a Title V Facility. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit through an administrative amendment at a later date.

The facility will remove the chip silo form at the MDF plant and install it at the particleboard plant. In addition

the applicant will construct two new PZ Flakers. The sources will be controlled by a new baghouse. Potential particulate matter emissions from the combined plants will increase by approximately 6.78 TPY based on the changes. The plan approval and operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

24-016B: Keystone Powdered Metal Co. (1933 State Street, St. Marys, PA 15857) for modification of afterburner temperature requirements for Steam Treating Furnaces No. 2149 and No. 3202 in St. Marys, **Elk County**. The facility currently has a Title V Operating Permit (24-00016). This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit through an administrative amendment at a later date. The installation will result in no increase in air emissions.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Contact: Edward Braun, Chief, (215) 685-9476.

01169: Purolite Co. (3620 G Street, Philadelphia, PA 19134) for installation of the following processes: cyclers, Glatt Dryer, caustic and acidic wastewater tanks, Iso-Butyl Alcohol (IBA) Condenser with IBA recovery tanks and an electric chiller system and copolymer wastewater at their facility in the City of Philadelphia, **Philadelphia County**. Purolite has also requested approval for the acceptance of facility-wide limits for VOC emission limits of 20 tons per rolling 12-month period and HAP emissions of 10 tons per rolling 12-month period. Purolite has also requested approval for the acceptance of facility-wide production limits.

OPERATING PERMITS

Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

22-05013: M. I. Metals, Inc. (1517 Route 209, Millersburg, PA 17061) for operation of a surface coating facility in Millersburg Borough, **Dauphin County**. This action is a renewal of the Title V Operating Permit issued in 1997.

28-05017: Hess-Armaclad Inc. (P. O. Box 127, Quincy, PA 17247) for operation of its Quincy Plant in Quincy Township, **Franklin County**. This action is a renewal of the facility's operating permit that was issued in 1997.

28-05028: Allegheny Energy Supply Co., LLC (4350 Northern Pike, Monroeville, PA 15146) for operation of two combustion turbines to be used as a peaking station in Guilford Township, **Franklin County**.

The plant is a major facility and is subject to the operating permit requirements of Title V of the Federal Clean Air Act and 25 Pa. Code Chapter 127, Subchapters F and G. Furthermore, the facility is subject to 40 CFR Part 60, Subparts GG and Kb, 40 CFR Parts 72, 73, 75 and 77 and 25 Pa. Code §§ 123.102—123.120 and Chapter 145.

Facility emissions shall be limited to 98 tons/year of NO_x, 135.8 tons/year of CO, 10.2 tons/year of SO₂, 11.9 tons/year of VOCs, 11.6 tons/year of PM₁₀ and 1 ton/year of HAPs. The Title V Operating Permit contains monitor-

ing, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

09-00086: Neshaminy High School (2001 Old Lincoln Highway, Langhorne, PA 19047) for operation of a high school in Middletown Borough, **Bucks County**. The permit is for a Non-Title V facility. The high school has the potential to emit 24.9 TPY of NO_x. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Michael Safko, Facilities Permitting Chief, (570) 826-2531.

48-309-112: ESSROC Cement Corp. (3251 Bath Pike, Nazareth, PA 18064) for operation of the No. 3 Cement Load-Out Station and associated air cleaning device at the Nazareth Plant No. 1 in Lower Nazareth Township, **Northampton County**.

48-309-115: ESSROC Cement Corp. (3251 Bath Pike, Nazareth, PA 18064) for operation of an unloading hopper and associated air cleaning device at the Nazareth Plant No. 1 in Lower Nazareth Township, **Northampton County**.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

05-03003: Chestnut Ridge School District (P. O. Box 80, Fishertown, PA 15539) for operation of two bituminous coal fired boilers, which primarily emit sulfur oxides at the Chestnut Ridge Middle School in East Saint Clair Township, **Bedford County**. The State Only Operating Permit will contain fuel restrictions, monitoring and recordkeeping requirements to keep the facility operating within all applicable requirements.

22-05037: Pennsy Supply, Inc. (P. O. Box 3331, Harrisburg, PA 17105) for operation of an asphalt plant controlled by a knockout box and fabric collector at the Paxton Street Asphalt Plant in the City of Harrisburg, **Dauphin County**. Actual emissions for criteria pollutants will be below Title V thresholds. This will be accomplished by limiting the production of asphalt produced. The operating permit will contain appropriate conditions designed to keep the facility operating below Title V thresholds for criteria pollutants and within all other applicable air quality requirements.

36-05003: Armstrong World Industries, Inc. (313 West Liberty Street, Lancaster, PA 17603) for operation of its Innovation Center for research and development in Manor Township, **Lancaster County**. The emissions sources are a collection of small-scale units operated as pilot lines for the company's various production lines. The facility has the potential to emit 10 tons per year of HAPs. The Synthetic Minor Operating Permit will include emission limits along with work practice standards, monitoring, recordkeeping and reporting requirements.

67-03104: Industrial Polishing and Grinding, Inc. (50 North Harrison Street, York, PA 17403) for operation

of its metal parts grinding and polishing facility in the City of York, **York County**. The facility has the potential to emit 8 tons of trichloroethylene annually. The Natural Minor Operating Permit will include testing, monitoring and recordkeeping requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

17-00002: Dominion Transmission, Inc. (625 Liberty Avenue, Pittsburgh, PA 15222-3197) for operation of their natural gas production facility (Helvetia Station) in Brady Township, **Clearfield County**. The facility's main sources include one natural gas fired reciprocating engine and a natural gas fired dehydration system. The facility has the potential to emit SO_x, CO, NO_x, PM₁₀, VOCs and HAPs below the major emission thresholds.

PUBLIC HEARING

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

25-0179: Erie Sewer Authority—Waste Water Treatment Plant (68 Port Access Road, Erie, PA 16507) to accept testimony concerning the Department's decision to approve, with conditions, the revised Reasonably Available Control Technology (RACT) plans for their facility in Erie, **Erie County**.

The public hearing will be held from 1 p.m. to 3 p.m. on November 7, 2002, in the Air Quality Conference Room, Meadville Regional Office, 230 Chestnut Street, Erie, PA.

The hearing is being held to meet the requirements under 25 Pa. Code §§ 129.91—129.95 concerning the emissions of NO_x and VOCs from various air contamination sources. The final RACT proposal will be submitted to the Environmental Protection Agency (EPA) as a revision to the Commonwealth's State Implementation Plan (SIP).

The proposed SIP revisions do not adopt any new regulations. They incorporate the provisions and requirements contained in RACT approvals for this facility to comply with current regulations.

The preliminary RACT determination, if finally approved, will be incorporated into a Plan Approval and/or Operating Permit for the facility and will be submitted to the EPA as a revision to the Commonwealth's State Implementation Plan.

The following is a summary of the preliminary NO_x determination for the Erie Sewer Authority:

<i>Source</i>	<i>Control</i>
65 kW Nat Gas Fired Onan	Presumptive RACT
65GGHB Emergency Generator	129.93(c)(5)
150 kW Natural Gas fired Onan	Presumptive RACT
150GGKD Emergency Generator	129.93(c)(5)
275 kW Diesel Fired Onan	Presumptive RACT
275DFBF Emergency Generator	129.93(c)(5)
60 kW Diesel Fired Kohler	Presumptive RACT
60ROZ271 Emergency Generator	129.93(c)(5)
One 0.4 mmBtu/hr Space Heater	Presumptive RACT
	129.93(c)(1)

<i>Source</i>	<i>Control</i>
Two 0.195 mmBtu/hr Space Heaters	Presumptive RACT 129.93(c)(1)
Three 0.095 mmBtu/hr Space Heaters	Presumptive RACT 129.93(c)(1)
One 0.080 mmBtu/hr Space Heater	Presumptive RACT 129.93(c)(1)
Sewage Sludge Incinerator 1	Additional controls not feasible
Sewage Sludge Incinerator 2	Additional controls not feasible

Persons wishing to present testimony at the hearing should contact Matthew Williams, New Source Review, at the previous address or telephone number at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to a maximum of 10 minutes and two written copies of the oral testimony are required. Each organization is requested to designate one witness to present testimony in its own behalf.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodations to do so should contact Matthew Williams at (814) 332-6940 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Those unable to attend the hearing but wishing to comment should provide written comments to Matthew Williams, New Source Review at the previous address. Comments should be submitted within 30 days of the date of this publication notice.

MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (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 before 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 certification.

Written comments, 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. 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 previous, 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 previously-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.

Coal Applications Received

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

54851336R3 and NPDES PA0223328. Summit Anthracite, Inc. (R. R. 1 Box 12A, Klingerstown, PA 17941), renewal of an existing underground mine operation in Porter and Frailey Townships, **Schuylkill County**, affecting 13.8 acres. Receiving stream: Good Spring Creek. Application received September 12, 2002.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

65020103 and NPDES Permit No. PA0250236. Opal Industries, Inc. (P. O. Box 980, Latrobe, PA 15650). Application for commencement, operation and reclamation of a bituminous surface mine located in Bell Township, **Westmoreland County**, affecting 168.2 acres. Receiving streams: unnamed tributaries to Wolford Run and Kiskiminetas River, classified for WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received September 11, 2001.

McMurray District Mining Office: 3913 Washington Road, McMurray, PA 15317, (724) 941-7100.

26961601. NPDES Permit PA0214779, Matt Canestrals Contracting, Inc. (P. O. Box 234, Belle Vernon, PA 15012), to renew the permit for the LaBelle Site in Luzerne and East Bethlehem Townships, **Fayette and Washington Counties**, renewal, Surface Acres Proposed N/A, Underground Acres Proposed N/A, SCP Acres Proposed N/A, CRDP Support Acres Proposed N/A, CRDP

Refuse Disposal Acres Proposed N/A, no additional discharges, classified for the following uses: N/A. The first downstream potable water supply intake from the point of discharge is N/A. Application received June 25, 2002.

11743703. NPDES Permit PA0214671, RNS Services, Inc. (P. O. Box 38, Blossburg, PA 16912), to revise the permit for the #25 Refuse Pile in Barr and West Carroll Townships, **Cambria County** to add 16.2 acres, Surface Acres Proposed N/A, Underground Acres Proposed N/A, SCP Acres Proposed N/A, CRDP Support Acres Proposed 16.2, CRDP Refuse Disposal Acres Proposed N/A, unnamed tributary to the Susquehanna River and West Branch of Susquehanna River, classified for the following uses: CWF and CWF. The first downstream potable water supply intake from the point of discharge is N/A. Application received August 7, 2002.

30841313. Consol Pennsylvania Coal Company. (P. O. Box 100, Osage, WV 26543), to revise the permit for the Dillworth Mine in Jefferson Township, **Greene County**, ACOE Pittsburgh District (from Mather, PA Quadrangle N: 11.85 inches; W: 4.95 inches to Mather, PA Quadrangle N: 12.2 inches; W: 5.1 inches).

This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15) and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize the construction of unnamed tributary to South Fork of Tenmile Creek.

Written comments or objections on the request for section 401 Water Quality Certification or to the issuance of the Water Obstruction and Encroachment Permit (Stream Module 15) may be submitted to the Department within 30 days of the date of this notice to the District Mining Office previously identified. Comments should contain the name, address and telephone number of the person commenting, identification of the request for 401 Water Quality Certification and Chapter 105 permit application (Stream Module 15) to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including relevant facts upon which they are based.

The Water Obstruction and Encroachment permit application is available for review at the McMurray District Mining Office, by appointment, at the address previously listed. Application received August 16, 2002.

63971701. NPDES Permit PA0215058, LTV Steel Co., Inc. (6801 Brecksville Rd., Independence, OH 44131, to renew the permit for the Clyde Mine Wastewater Treatment Plant in East Bethlehem Township, **Washington County**, renewal, Surface Acres Proposed N/A, Underground Acres Proposed N/A, SCP Acres Proposed N/A, CRDP Support Acres Proposed N/A, CRDP Refuse Disposal Acres Proposed N/A, no additional discharges, classified for the following uses: N/A. The first downstream potable water supply intake from the point of discharge is N/A. Application received August 19, 2002.

17743702. NPDES Permit PA0215490, Pennfield Collieries, LLC (1088 Springhurst Drive, Green Bay, WI 54304), to revise the permit for the Stott No. 1—Coal Refuse in Huston Township, **Clearfield County** to transfer the additional acres from the Stott No. 1—Prep Plant and allow the beneficial use of coal ash, Surface Acres Proposed N/A, Underground Acres Proposed N/A, SCP Acres Proposed N/A, CRDP Support Acres Proposed 3.4, CRDP Refuse Disposal Acres Proposed N/A, no additional discharges, classified for the following uses: N/A. The

first downstream potable water supply intake from the point of discharge is N/A. Application received August 26, 2002.

30841316. Consol Pennsylvania Coal Company (172 Route 519, Eighty-Four, PA 15330), to revise the permit for the Bailey Mine in Richhill Township, **Greene County**, ACOE Pittsburgh District (Windridge, PA Quadrangle N: 6.3 inches; W: 7.4 inches to N: 7.1 inches; W: 7.1 inches and N: 5.9 inches; W: 5.7 inches to N: 4.65 inches; W: 8.05 inches).

This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15) and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize the mitigation of any impacts to the streams over the 19A and 20A longwall panels.

Written comments or objections on the request for section 401 Water Quality Certification or to the issuance of the Water Obstruction and Encroachment Permit (Stream Module 15) may be submitted to the Department within 30 days of the date of this notice to the District Mining Office identified. Comments should contain the name, address and telephone number of the person commenting, identification of the request for 401 Water Quality Certification and Chapter 105 permit application (Stream Module 15) to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including relevant facts upon which they are based.

The Water Obstruction and Encroachment permit application is available for review at the McMurray District Mining Office, by appointment, at the address previously listed. Application received August 30, 2002.

03841305. NPDES Permit PA0002275, Keystone Coal Mining Corp. (P. O. Box 219, 400 Overview Dr., Shelocta, PA 15774), to renew the permit for the Emilie No. 1 and No. 2 Mine in Plumcreek Township, **Armstrong County**, renewal, Surface Acres Proposed N/A, Underground Acres Proposed N/A, SCP Acres Proposed N/A, CRDP Support Acres Proposed N/A, CRDP Refuse Disposal Acres Proposed N/A, no additional discharges, classified for the following uses: N/A. The first downstream potable water supply intake from the point of discharge is N/A. Application received September 11, 2002.

63831302. Eighty-Four Mining Company (172 Route 519, Eighty-Four, PA 15330), to revise the permit for the Mine 84 in North Strabane and South Strabane Townships, **Washington County**, ACOE Pittsburgh District (Washington East, PA Quadrangle N: 11.1 inches; W: 5.75 inches to N: 11.55 inches; W: 5.95 inches and N: 11.85 inches; W: 6.05 inches to N: 12.4 inches; W: 6.3 inches).

This is a Chapter 105 Water Obstruction and Encroachment permit application (Stream Module 15) and 401 Water Quality Certification request, if applicable, submitted as part of the mining permit revision application to authorize the Mitigation of subsidence effects on unnamed tributary to Little Chartiers Creek.

Written comments or objections on the request for section 401 Water Quality Certification or to the issuance of the Water Obstruction and Encroachment Permit (Stream Module 15) may be submitted to the Department within 30 days of the date of this notice to the District Mining Office identified. Comments should contain the name, address and telephone number of the person commenting, identification of the request for 401 Water

Quality Certification and Chapter 105 permit application (Stream Module 15) to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including relevant facts upon which they are based.

The Water Obstruction and Encroachment permit application is available for review at the McMurray District Mining Office, by appointment, at the address previously listed.

Application received September 11, 2002.

32971303. NPDES Permit PA0215066, Penn View Mining, Inc. (R. D. 1, Box 260D, Shelocta, PA 15774), to renew the permit for the Penn View Mine in West Wheatfield Township, **Indiana County**, renewal, Surface Acres Proposed N/A, Underground Acres Proposed N/A, SCP Acres Proposed N/A, CRDP Support Acres Proposed N/A, CRDP Refuse Disposal Acres Proposed N/A, no additional discharges, classified for the following uses: N/A. The first downstream potable water supply intake from the point of discharge is N/A. Application received September 16, 2002.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

16970103 and NPDES Permit No. PA 0227421. Original Fuels, Inc. (P. O. Box 343, Punxsutawney, PA 15767). Renewal of an existing bituminous surface strip operation in Clarion Township, **Clarion County** affecting 104.2 acres. Receiving streams: unnamed tributaries to Brush Run, classified for CWF. There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received September 20, 2002.

Noncoal Applications Received

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

8274SM6C5 and NPDES PA0595349. Binkley & Ober, Inc. (P. O. Box 7, East Petersburg, PA 17520), renewal of NPDES Permit in East Hempfield Township, **Lancaster County**, receiving stream: Little Conestoga Creek, classified for TSF. Application received September 16, 2002.

ABANDONED MINE RECLAMATION

Under Act 181 of 1984, the Department solicits letters of interest from the landowners and/or licensed mine operators for the reclamation of the following abandoned strip mine project:

Project No. BF 488-101.1, Forward Township, Allegheny County, 7 acres.

Letters of interest must be received by Roderick A. Fletcher, P. E., Director, Bureau of Abandoned Mine Reclamation, Department of Environmental Protection, 400 Market Street, P. O. Box 8476, Harrisburg, PA 17105-8476, by 4 p.m. on November 4, 2002, to be considered. Telephone inquiries should be directed to Chuck Siders, Division of Mine Hazards, (717) 783-0474.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

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 (FWPCA) (33 U.S.C.A. § 1341(a)), requires the State to certify that the involved projects will not violate the

applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Initial requests for 401 Water Quality 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 Permit or Water Obstruction and Encroachment Permit, or the approval of an Environmental Assessment must submit any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between the hours of 8 a.m. and 4 p.m. on each working day at the office noted before the application.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users may contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications Received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and Requests for Certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

E46-924. Macoby Run Limited Partnership, 404 Summertown Pike, Suite 200, North Wales, PA 19454, Upper Hanover Township, **Montgomery County**, ACOE Philadelphia District.

To construct and maintain approximately 550 linear feet of 36-inch diameter reinforced concrete pipe stream enclosure along an unnamed tributary to Macoby Run (TSF) associated with the widening of Woodbridge Lane at the proposed Reserve at Macoby Run Residential Subdivision. This project also includes the installation and maintenance of an 8-inch DIP water main and a temporary cofferdam across Macoby Run (TSF). The site is located at the intersection of Saint Pauls Church Road and 6th Street (Milford Square, PA USGS Quadrangle N: 1.4 inches; W: 14.2 inches).

E15-697. Pennsylvania Department of Transportation, District 6, 7000 Geerdes Boulevard, King of Prussia, PA 19406-1525, West Nantmeal and Honeybrook Townships, **Chester County**, ACOE Philadelphia District.

To remove, replace and maintain an existing single span steel girder bridge with a 100-foot single span

prestressed concrete spread box beam bridge with superstructure depth of 4.7 feet and hydraulic opening of 98.4-foot span and 5.6-foot underclearance over the East Branch of Brandywine Creek (HQ-TSF-MF) on Chestnut Tree Road (SR 4025). Work will also include:

1. Improvement of approximately 220 linear feet of vertical roadway alignment.
2. Installation of the stormwater facilities associated with the roadway improvement.
3. Installation of the temporary access, consisting of causeways crossings the creek.

This site is located just south of intersection of Cupola Road and Chestnut Tree Road (Wagontown, PA Quadrangle N: 17.5 inches; W: 13.4 inches).

E46-925. Borough of Pottstown, Pottstown Borough Hall, 100 E. High Street, Pottstown, PA 19464, Pottstown Borough, **Montgomery County**, ACOE Philadelphia District.

To construct and maintain an approximately 300-foot long proposed road (Keystone Boulevard) and a multi-use trail situated along the floodway and floodplain of the Schuylkill River (WWF-MF) to provide access for the future industrial and commercial development. Limit of the work will begin just west of College Drive and Manatawny Creek (Pottstown, PA Quadrangle N: 21.6 inches; W: 5.0 inches) and will extend 3,000 feet along the existing PECO right-of-way running parallel to the Schuylkill River and will end (Pottstown, PA Quadrangle N: 21.6 inches; W: 6.6 inches).

Work will consist of:

1. Construction of two 12-foot lanes with a 3-foot wide shoulder on both sides and a 12-foot wide multi-use trail between the river and the proposed road.
2. Construction of a drainage channel and associated outfall along the north and south side of the multi-use trail.
3. Extension of an existing stream enclosure in and along a tributary to the Schuylkill River by installing 35 linear feet of 31 5/8 inch by 51 1/8-inch arch pipe to the downstream end at station 103 + 50.

Extension of an existing stream enclosure in and along a tributary to Schuylkill River by installing 40 linear feet of 24-inch by 38-inch elliptical pipe to the downstream end at station 123 + 50.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

E05-305. Ardeth Facciani, 221 Station Street, Johnstown, PA 15905 in Bedford Township, **Bedford County**, ACOE Baltimore District.

To construct and maintain a 30-inch corrugated plastic pipe stormwater outfall and a 12-foot by 13-foot rock apron in the channel of Shobers Run (HQ-CWF) at a point approximately 1,200 feet upstream of its confluence of the Raystown Branch of the Juniata all for the purpose of constructing the proposed 44-Lot Church Hill Manor Subdivision (Everrett West, PA Quadrangle N: 2.95 inches; W: 16.08 inches) in Bedford Township, Bedford County.

E06-577. Earl Township, 19 Schoolhouse Road, Boyertown, PA 19512 in Earl Township, **Berks County** ACOE Philadelphia District.

To construct and maintain a 3-inch low pressure sewer crossing under Trout Run (EV) at a point approximately

200 feet south of the intersection of Manatawny and Longview Roads (Boyertown, PA Quadrangle N: 13.6 inches; W: 14.8 inches) in Earl Township, Berks County.

E07-362. The Pennsylvania State University—Altoona, 3000 Ivyside Park, Altoona, PA 16601 in Logan Township, **Blair County**, ACOE Baltimore District.

To construct and maintain a 69-lot parking area in 0.04 acre of emergent wetlands adjacent to Spring Run (WWF) on the Pennsylvania State University—Altoona Campus (Altoona, PA Quadrangle N: 7.38 inches; W: 5.38 inches) in Logan Township, Blair County. The wetland impacts are considered de minimis and mitigation is not required.

E07-363. David Birchfield, Allegheny Township, 3131 Old Sixth Avenue Road, North Duncansville, PA 16635 in Allegheny Township, **Blair County**, ACOE Baltimore District.

To remove the existing bridge and to construct and maintain a single span concrete bridge having a normal span of 35 feet with an underclearance of 3 feet on T-406 (Willowbrooke Road) across Gillans Run (CWF) and to fill in a 0.007 acre of de minimis wetlands (Hollidaysburg, PA Quadrangle N: 10.4 inches; W: 10.3 inches) in Allegheny Township, Blair County.

E22-445. Doc Fritchey Chapter Trout Unlimited, 2319 Valley Road, Harrisburg, PA 17104 in Swatara Township, **Dauphin County**, ACOE Baltimore District.

To construct and maintain a stream restoration project within the Spring Creek (WWF) watercourse and its tributaries for the purposes of stream bank stabilization, improved sediment transport, establishment of riparian buffers and improved aquatic habitat while implementing a natural stream channel design approach consisting of the following construction activities: stream and floodway excavation and filling, installation of rock vanes, cross vanes, J-hooks and riprap, placement of random boulders, root wads, stormwater best management practices, invasive plant species removal and riparian planting. The initial phase of the project consists of realigning and stabilizing approximately 1,850 feet of Spring Creek (WWF) beginning at a point approximately 250 feet downstream of Paxton Street and continuing 850 feet downstream (Harrisburg East, PA Quadrangle N: 0.8 inch; W: 11.7 inches) in Swatara Township, Dauphin County. The applicant is proposing to stabilize severely eroded stream banks, bank grading and the installation of in-stream rock and root wad habitat structures.

E28-307. Lisa Myers, Pennsylvania Department of Transportation 8-0, 2140 Herr Street, Harrisburg, PA 17103 in Antrim Township, **Franklin County**, ACOE Baltimore District.

To remove the existing structure and to construct and maintain a concrete box culvert at the channel of Muddy Run (HQ-CWF) on SR 2001, Section 003, Segment 0110, Offset 0086 located in the Village of Brown's Mills (Greencastle, PA Quadrangle N: 14.4 inches; W: 10.9 inches) in Antrim Township, Franklin County.

E29-084. Mason Dixon Boy Scout Council of America, 677 Boy Scout Road, Fort Littleton, PA 17223 in Dublin Township, **Fulton County**, ACOE Baltimore District.

To construct a 1,600-foot stream restoration including stream relocation, creation and enhancement of floodplain wetlands, excavation of floodplain fill and placement of in-stream structures and to replace an existing twin 36-inch culvert crossing with an 11-foot by 3 1/2-foot arch culvert in the channel of a tributary to Plum Run (Dry

Run) (TSF) at a point upstream of the Camp Snoquipe Lake extending 1,600 feet (Burnt Cabins, PA Quadrangle N: 16.0 inches; W: 13.6 inches) in Dublin Township, Fulton County.

E36-730. Ward Oberholtzer, Chiques Creek Watershed Association, 971 N. Colebrook Road, Manheim, PA 17545 in Rapho Township and Manheim Borough, **Lancaster County**, ACOE Baltimore District.

To construct and maintain a stream restoration project within the Chickies Creek (TSF) watercourse and its tributaries for the purposes of: stream bank stabilization, improved sediment transport, establishment of riparian buffers and improved aquatic habitat while implementing a natural stream channel design approach consisting of the following construction activities: channel relocation, stream and floodway excavation and filling, installation of rock vanes, cross vanes, J-hooks and riprap, placement of random boulders, root wads and log spurs, ford improvements and cattle crossing installations.

The initial phase of the project consists of realigning and stabilizing approximately 1,000 feet of Rife Run (WWF) just north of SR 772 within Mummua Park (Manheim, PA Quadrangle N: 6.2 inches; W: 4.2 inches) in Rapho Township and Manheim Borough, Lancaster County. The applicant is proposing to construct and stabilize the channel using cross vanes, log vanes or rock vanes, plantings of native grasses, trees and shrubs. The existing channel will be abandoned and filled with excavated material from the proposed channel.

E38-135. Lisa Myers, Pennsylvania Department of Transportation 8-0, 2140 Herr Street, Harrisburg, PA 17103 in South Londonderry Township, **Lebanon County**, ACOE Baltimore District.

To remove the existing structure and to construct and maintain a 20-foot by 7-foot concrete box culvert at the channel of Conewago Creek (TSF) on SR 0241, Section 005, Segment 0060, Offset 0000 located about 0.75 mile north of the Village of Lawn (Elizabethtown, PA Quadrangle N: 19.3 inches; W: 4.8 inches) in South Londonderry Township, Lebanon County.

E67-726. Lisa Myers, Pennsylvania Department of Transportation 8-0, 2140 Herr Street, Harrisburg, PA 17103 in York Township, **York County**, ACOE Baltimore District.

To remove and construct an 18-inch reinforced concrete pipe, relocate approximately 50 feet of stream, 45 feet of culvert removal/channel restoration and 222 feet of culvert extension of existing 226-foot long culvert across tributary to Tyler Run (WWF) and place fill material in a wetland located along SR 0083 Section 025 (York, PA Quadrangle N: 5.3 inches; W: 11.1 inches) in York Township, York County. The amount of wetland impact is considered a de minimis impact of 0.01 acre and wetland mitigation is not required.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.

E49-264. Pennsylvania Department of Transportation, Engineering District 3-0, P. O. Box 218, Montoursville, PA 17754-0218. Benny's Run bridge replacement, in Shamokin Township, **Northumberland County**, ACOE Susquehanna River Basin District (Treverton, PA Quadrangle N: 10.7 inches; W: 0.75 inch).

To remove an existing structure and construct and maintain a 15-foot long by 5.5-foot high by 30-foot wide reinforced concrete box culvert in Benny's Run (CWF).

The project is located along SR 4026 approximately 2.5 miles west of SR 4026 and SR 61 intersection in Jordan Township, Northumberland County. The bridge replacement will not impact any jurisdictional wetlands while permanently impacting 40 feet of waterway.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1397. Leetsdale Borough, 85 Broad Street, Leetsdale, PA 15056. Leetsdale Borough, **Allegheny County**, ACOE Pittsburgh District.

To construct and maintain a boat dock and to operate and maintain the existing boat launching ramp in the channel of and on the right bank of the Ohio River (WWF) for the purpose of providing public access to the river. The project is located at River Mile Marker 15, approximately 9,000 feet downstream from the Dashields Dam (Ambridge, PA Quadrangle N: 12.7 inches; W: 13.7 inches).

E26-297. Fayette County Commissioners, Courthouse, 61 East Main Street, Uniontown, PA 15401. Luzerne and Redstone Townships, **Fayette County**, ACOE Pittsburgh District.

To remove the existing structure (Fayette County Bridge No. 147) and to construct and maintain a reinforced concrete box beam bridge having a normal span of 46.0 feet and an underclearance of 12.0 feet over Dunlap Creek (WWF). Also to construct and maintain two 18 inch diameter stormwater outfalls in Dunlap Creek (WWF). The project is located on Township Road 326 (Merrittstown Road) near its intersection with Thompson No. 2 Road and Main Street (Carmichaels, PA Quadrangle N: 16.8 inches; W: 1.6 inches).

E56-318. Pennsylvania Department of Transportation, District 9-0, 1620 North Juniata Street, Hollidaysburg, PA 16648. Lower Turkeyfoot Township, **Somerset County**, ACOE Pittsburgh District.

To remove the existing structure and to construct and maintain a prestressed concrete spread box beam bridge having a normal span of 45.15 feet and an underclearance of 5.83 feet over Drake Run (HQ-CWF). Also to construct and maintain a temporary crossing consisting of three 36 inch diameter pipes in Drake Run (HQ-CWF) and to temporarily place and maintain fill in 0.037 acre of PEM wetland. The project is located on SR 3003 just south of Drake (Confluence, PA Quadrangle N: 17.9 inches; W: 17.0 inches).

E56-321. Summit Township Supervisors, Industrial Park Road, P. O. Box 27, Meyersdale, PA 15552. Summit Township, **Somerset County**, ACOE Pittsburgh District.

To operate and maintain an 80-foot long pipe culvert having two 6-foot diameter steel pipes in Miller Run (CWF) located on T-363 (Fi-Hoff Lane) at a point approximately 200 feet south of SR 219. The project was constructed under Emergency Permit No. EP5602201 (Meyersdale, PA Quadrangle N: 8.4 inches; W: 5.4 inches).

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

E10-363. James Austin Company, 115 Downieville Road, Mars, PA 16046-0827. Austin Bridge and Building Addition, in Adams Township, **Butler County**, ACOE Pittsburgh District (Mars, PA Quadrangle N: 10.3 inches; W: 0.1 inch).

To construct and maintain a single span pedestrian bridge having a clear span of approximately 80 feet and

an underclearance of 8.4 feet across Breakneck Creek (WWF) approximately 300 feet northeast of the intersection of SR 3015 (Mars Valencia Road) and Downieville Road. Project includes excavation a 160-foot long and 15-foot wide area along the left bank of Breakneck Creek. Also, to construct and maintain an addition for label storage onto the west side of the existing James Austin Company main building with the addition measuring approximately 30 feet wide by 100 feet long and partially within the 100-year floodway of Breakneck Creek.

E20-522. Pennsylvania Department of Transportation, District 1-0, 255 Elm Street, P. O. Box 398 Oil City, PA 16301. SR 1019, Segment 0050, Offset 0142 Across Boles Run, in Venango Township, **Crawford County**, ACOE Pittsburgh District (Cambridge Springs, PA Quadrangle N: 11.0 inches; W: 15.3 inches).

To remove the existing structure and to construct and maintain a prestressed concrete bridge having a clear span of 76.0 feet and an underclearance of 10.8 feet on a 90 degree skew across Boles Run on SR 1019, Segment 0050, Offset 0142 approximately 1.1 miles north of Venango.

E24-226. St. Marys Municipal Authority, 808 S. Michael Road, P. O. Box 1994, St. Marys, PA 15857. City of St. Marys Wastewater Treatment Plant Expansion, in City of St. Marys, **Elk County**, ACOE Pittsburgh District (Saint Marys, PA Quadrangle N: 8.5 inches; W: 10.6 inches).

To expand and maintain the existing City of St. Marys Wastewater Treatment Plant within the 100-year flood plain and floodway of Elk Creek north of SR 120 approximately 0.75 mile west of SR 255. Project includes the construction of an outfall and headwall along the right bank, a new headworks building, SBR tanks, chlorinator, piping and fill for roadways and around structures impacting a total of approximately 1 acre within the floodplain and floodway extending downstream from the existing access road. Construction was started prior to obtaining this permit.

E25-657. Conneaut Township Supervisors, 12500 U. S. Route 6N, Albion, PA 16401. T-352 Culvert Replacement, in Conneaut Township, **Crawford County**, ACOE Pittsburgh District (Beaver Center, PA Quadrangle N: 18.7 inches; W: 3.7 inches).

To maintain a 65-foot long, 15-foot wide by 8-foot high corrugated metal pipe arch culvert in a unnamed tributary to Conneaut Creek (CWF, MF) in Conneaut Township, Erie County on T-352 (Keepville Road/Railroad Road) approximately 0.1 mile north of the intersection of T-352 (Keepville Road/Railroad Road) and SR 3011 (Pennside Road). This application was the result of an Emergency Permit (EP2502605) issued on June 18, 2002, to replace an existing collapsing culvert. Construction was completed in August 2002.

E25-658. Amity Township Supervisors, 15030 Casler Road, Union City, PA 16438. Messenger Road (T-788) Culvert Project, in Amity Township, **Erie County**, ACOE Pittsburgh District (Union City, PA Quadrangle N: 13.2 inches; W: 2.4 inches).

To remove the existing structure and to construct and maintain a 40-foot long, 8-foot wide by 5.6-foot high corrugated metal plate pipe arch culvert with concrete block headwall and endwall in Beaver Run (EV) on Messenger Road (T-788) approximately 500 feet south of

the intersection of Fenno Road and Messenger Road (T-788). The project included repositioning the inlet of the culvert approximately 5 feet upstream of the existing superstructure inlet and minor realignment of 25 feet of the channel. This application was the result of an Emergency Permit (EP2502604) issued on April 23, 2002. Construction was completed in June 2002.

E37-145, Pulaski Township Municipal Authority, R. D. 1 Box 1043, Pulaski, PA 16102. Pulaski Township Municipal Authority Sewage Facilities, in Pulaski Township, **Lawrence County**, ACOE Pittsburgh District.

To conduct the following activities associated with the construction of sewage collection and treatment system servicing New Bedford, Pine Glenn, Frizzleburg and the Village of Pulaski in Pulaski Township, Lawrence County:

1. Construct and maintain an outfall and endwall along the left (east) bank of the Shenango River from the Pulaski Wastewater Treatment Plant approximately 900 feet upstream of the SR 208 bridge.

2. Construct and maintain an outfall and endwall along the right (south) bank of Deer Creek from the New Bedford Wastewater Treatment Plant approximately 950 feet downstream of Valley View Road.

3. Construct and maintain the New Bedford Wastewater Treatment Plant partially within the 100-year flood plain of Deer Creek and impacting 0.076 acre of wetland approximately 700 feet east of Valley View Road south of Deer Creek.

4. Fill 0.0592 acre of wetland for an access roadway to the Pulaski Wastewater Treatment Plant.

5. Fill 0.0394 acre of wetland for access to a pump station in the Frizzleburg Service Area south of Maple Lane.

6. Construct and maintain sanitary sewer gravity lines and force mains across 15 wetland areas totaling 0.81 acre of temporary impact. Of these impacts, two are within the Pulaski Service Area, one is within the Frizzleburg Service Area, seven are within the Pine Glenn Service Area and four are within the New Bedford Service Area.

7. Construct and maintain a sanitary sewer force main across the Shenango River approximately 470 feet downstream of the SR 208 bridge.

8. Construct and maintain four sanitary sewer line crossings of tributaries to the Shenango River in the Frizzleburg Service Area.

9. Construct and maintain a sanitary sewer line crossing Deer Creek two times in the New Bedford service, one approximately 800 feet east of Valley View Road and another approximately 200 feet west of Valley View Road.

10. Construct and maintain 23 sanitary sewer line crossings of tributaries to Deer Creek of which 12 are within the Pine Glenn Service Area and 11 are within the New Bedford Service Area.

Project proposes contribution to the Pennsylvania Wetland Replacement Fund for replacement of a total of 0.175 acre of permanent wetland impact.

ACTIONS

FINAL ACTIONS TAKEN UNDER THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT—NPDES AND WQM PART II PERMITS

INDUSTRIAL WASTE AND SEWERAGE WASTEWATER

The Department of Environmental Protection has taken the following actions on previously received permit applications and requests for plan approval.

Persons aggrieved by an 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 Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. Municipal and Industrial Permit Actions under The Clean Streams Law (35 P. S. §§ 691.1— 691.1001).

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

NPDES Permit No. PA0011649, Industrial Waste, **Exelon Generation Company**, 200 Exelon Way, Suite 140, KSA1E, Kennett Square, PA 19348. This proposed facility is located in City of Philadelphia, **Philadelphia County**.

Description of Proposed Action/Activity: Renewal to discharge into Delaware River Estuary Zone 3.

NPDES Permit No. PA0050377, Industrial Waste, **Lonza Inc.**, 900 River Road, Conshohocken, PA 19428. This proposed facility is located in Upper Merion Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval to amend existing permit to use two new chemical additives in the cooling tower to discharge into Schuylkill River via Matsunk Creek.

NPDES Permit No. PA0058556, Industrial Waste, **Downingtown Municipal Water Authority**, 100 Water Plant Way, Downingtown, PA 19335. This proposed facility is located in Downingtown Borough, **Chester County**.

Description of Proposed Action/Activity: Approval to discharge into an unnamed tributary to Beaver creek-3H-Watershed.

NPDES Permit No. PA0036978 Amendment No. 4, Sewage, **Telford Borough Authority**, 122 Penn Avenue, P. O. Box 209, Telford, PA 18969-0209. This proposed facility is located in Franconia Township, **Montgomery County**.

Description of Proposed Action/Activity: Amend existing permit to reroute the wastewater treatment plant to handle maximum monthly of 1.23 mgd into Indian Creek-3E Watershed.

NPDES Permit No. PA0056961, Sewage, **Ronald J. Stralkowski**, 2973 Artmar Road Norristown, PA 19403. This proposed facility is located in Worcester Township, **Montgomery County**.

Description of Proposed Action/Activity: Renewal to discharge into a tributary to Stony Creek-3F Watershed.

NPDES Permit No. PA0054151, Sewage, **Joseph L. Kennedy**, 7 College View Road, Malvern, PA 1935. This proposed facility is located in East Whiteland Township, **Chester County**.

Description of Proposed Action/Activity: Renewal to discharge into an unnamed tributary of Ridley Creek.

WQM Permit No. 1502405, Sewerage, **New Garden Township Sewer Authority**, 8934 Gap Newport Pike, Landenberg, PA 19350. This proposed facility is located in New Garden Township, **Chester County**.

Description of Proposed Action/Activity: Construction and operation of a forcemain and sewer extension located along Candlewyck Drive.

WQM Permit No. 1502413, Sewerage, **Department of General Services**, 18th and Herr Streets, Harrisburg, PA 17125. This proposed facility is located in Lower Oxford Township, **Chester County**.

Description of Proposed Action/Activity: Approval to replace the existing Lincoln University Campus Sewage treatment plant with a new oxidation ditch type sewage treatment plant to handle existing 0.180 mgd of flow.

WQM Permit No. 1500410, Amendment No. 1, Sewerage, **East Goshen Municipal Authority**, 1580 Paoli Pike, West Chester, PA 19380. This proposed facility is located in East Goshen Township, **Chester County**.

Description of Proposed Action/Activity: Approval to amend existing permit to include a spray irrigation system to the previous approved pump station and force main project serving Applebrook Golf Course.

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.

NPDES Permit No. 2202404, Sewage, **Derry Township Municipal Authority**, 670 Clearwater Road, Hershey, PA 17033. This proposed facility is located in Derry Township, **Dauphin County**.

Description of Proposed Action/Activity: Approval for the construction/operation of pump stations.

Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

NPDES Permit No. PA0008575, Industrial Waste SIC 3315, **Williamsport Wire Rope Works Inc.**, P. O. Box 3188, Williamsport, PA 17701. This proposed facility is located in City of Williamsport, **Lycoming County**.

Description of Proposed Action/Activity: Renewal of NPDES Permit.

WQM Permit No. 0802402, Sewerage SIC 4952, **Wysox Municipal Authority**, 724 Main Street, Towanda, PA 18848. This proposed facility is located in Wysox Township, **Bradford County**.

Description of Proposed Action/Activity: Amend permit for design change.

NPDES Permit No. PA0028681, Sewerage SIC 4952, **Kelly Township Municipal Authority**, 299 River Road, Lewisburg, PA 17837. This proposed facility is located in Kelly Township, **Union County**.

Description of Proposed Action/Activity: Renewal of NPDES Permit.

WQM Permit No. 1702402, Sewerage SIC 4952, **Matthew and Tabitha Bennett**, 3259 Mahaffey-Grampian Road, Mahaffey, PA 15757. This proposed facility is located in Greenwood Township, **Clearfield County**.

Description of Proposed Action/Activity: Issuance of a water quality management permit for construction and operation of single residence sewage plant.

NPDES Permit No. PA0228567, Sewage 4952, **Louise McCarthy and Joyce Steele**, R. D. 2 Box 93, New Albany, PA 18833. This facility is located in Colley Township, **Sullivan County**.

Description of Action/Activity: Issuance of NPDES permit for small flow wastewater treatment facilities serving the Colley Valley Pub.

WQM Permit No. 5702401, Sewage 4952, **Louise McCarthy and Joyce Steele**, R. D. 2 Box 93, New Albany, PA 18833. This facility is located in Colley Township, **Sullivan County**.

Description of Action/Activity: Issuance of WQM permit for small flow wastewater treatment facilities serving the Colley Valley Pub.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

NPDES Permit No. PA0002054-A1, Industrial, **Reliant Energy**, 1001 Broad Street, Johnstown, PA 15907 is authorized to discharge from a facility located at Seward Generating Station, East Wheatfield Township, **Indiana County** to receiving waters named unnamed tributary to the Conemaugh River.

NPDES Permit No. PA0002437, Industrial Waste, **Shenango, Inc.**, 200 Neville Road, Pittsburgh, PA 15225-1690 is authorized to discharge from a facility located at Coke Facility, Neville Township, **Allegheny County** to receiving waters named Ohio River.

NPDES Permit No. PA0092037, Sewage, **James Bender**, 57 Woodland Drive, Apt. 101, Vero Beach, FL 32962 is authorized to discharge from a facility located at the Woodlawn Mobile Home Court STP, Unity Township, **Westmoreland County** to receiving waters named Little Crabtree Creek.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

NPDES Permit No. PA0003247, Industrial Waste, **ESSROC Cement Corp.**, P. O. Box 779, Bessemer, PA

16112-0779. This proposed facility is located in Bessemer Borough, **Lawrence County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Hickory Run.

NPDES Permit No. 0000345, Industrial Waste, Amendment No. 1, **Pennsylvania-American Water Company—Clarion Filter Plant**, 1073 E. Main Street, Clarion, PA 16214. This proposed facility is located in Clarion Township, **Clarion County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Clarion River and an unnamed tributary to the Clarion River.

NPDES Permit No. PA0103241, Sewage, **Moniteau School District, Marion Township Elementary School**, 1810 West Sunbury Road, West Sunbury, PA 16061. This proposed facility is located in Marion Township, **Butler County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to an unnamed tributary to Seaton Creek.

NPDES Permit No. PA0034720, Sewage, **Lakeview Manor Estates, LLC**, 9 Corporate Center, Broadview Heights, OH 44147. This proposed facility is located in Union Township, **Crawford County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Kebort Run.

NPDES Permit No. PA0101745, Sewage, **Clarview Rest Home, Inc. d/b/a Clarview Nursing & Rehabilitation Center**, 14663 Route 68, Sligo, PA 16255. This proposed facility is located in Piney Township, **Clarion County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to an unnamed tributary to Licking Creek.

NPDES Permit No. PA0035513, Sewage, **Pennsylvania Department of Transportation, Welcome Center Site E**, P. O. Box 3060, Harrisburg, PA 17105-3060. This proposed facility is located in Shenango Township, **Mercer County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to an unnamed tributary to Shenango River.

NPDES Permit No. PA0222283, Sewage, **Corsica Borough**, P. O. Box 176, Corsica, PA 15829-0176. This proposed facility is located in Corsica Borough, **Jefferson County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Welch Run.

WQM Permit No. 2001415, Sewerage, **University of Pittsburgh**, 3400 Forbes Avenue, Pittsburgh, PA 15260. This proposed facility is located in South Shenango Township, **Crawford County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a small flow treatment facility.

WQM Permit No. 3302401, Sewerage, **Reynoldsville Sewage Authority**, 400 North Fifth Street, Reynoldsville, PA 15851. This proposed facility is located in Reynoldsville Borough, **Jefferson County**.

Description of Proposed Action/Activity: This project is for West Side Lift Station modifications.

WQM Permit No. 3302402, Sewerage, **Frank A. Varischetti**, R. R. 1, Box 94, Brockway, PA 15824. This proposed facility is located in Snyder Township, **Jefferson County**.

Description of Proposed Action/Activity: This project is for a single residence sewage treatment plant.

APPROVALS TO USE NPDES AND/OR OTHER GENERAL PERMITS

The following parties have submitted: (1) Notices of Intent for Coverage under (1) General NPDES Permits to Discharge Wastewater into the Waters of the 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 Permits for Beneficial Use of Sewage Sludge or Residential Septage by Land Application in this Commonwealth; (3) General NPDES Permit Authorizing the Discharge of Stormwater Associated with Construction Activities to Waters of this Commonwealth; (4) Notification for First Use Application of Sewage Sludge.

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 permit. The Department of Environmental Protection approves the following coverage under the specific General Permit.

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

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 Types

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From 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 (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application

PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)

General Permit Type—PAG-2

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Windsor Township York County	PAR10Y581	Chatham Creek LLC Jeff Rutt 214A Willow Valley Lakes Drive Willow Street, PA 17584	Fishing Creek TSF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
West Manchester Township York County	PAR10Y633	Jana Bean Target Corporation 1000 Nicollet Mall Minneapolis, MN 55403	Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Monaghan Township York County	PAR10Y621	Dennis Burd 5120 Ravenwood Drive Mechanicsburg, PA 17055	Fishers Run CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Bradford County Athens Borough	PAR100830	Athens Borough 2 South River St. Athens, PA 18810	Susquehanna River WWF Chemung River WWF	Bradford County Conservation District R. R. 5, Box 5030C Stoll Natural Resource Center Towanda, PA 18848 (570) 265-5539 Ext. 205
Snyder County Penn Township	PAR105925	Meadowview Estates— Phase III John Fogarty Quarry Road 7 Old Colony Rd. Selinsgrove, PA 17870	Tributary to Penns Creek CWF	Snyder County Conservation District 403 West Market St. Middleburg, PA 17842 (570) 837-0007 Ext. 112
Tioga County Blossburg Borough Covington and Rich- mond Townships	PAR106636-1	Pennsylvania Depart- ment of Transportation District 3-0 715 Jordan Ave. Montoursville, PA 17754	Tioga River CWF	Tioga County Conservation District 29 East Avenue Wellsboro, PA 16901 (570) 724-1801
Somerset County Summit Township	PAR106150	Department of Environ- mental Protection Bureau of Abandoned Mine Reclamation 286 Industrial Park Rd. Ebensburg, PA 15931	Cranberry, Spook Run to Elk Lick Creek CWF	Somerset County Conservation District (814) 445-4652
Washington County Peters Township	PAR10W202	Victor Dosse 80 Center Church Rd. McMurray, PA 15317	Peters Creek CWF	Washington County Conservation District (724) 228-6774

General Permit Type—PAG-3

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Berks County Reading City	PAR803621	Norfolk Southern Railway Company Spring Street Yard 110 Franklin Road SE Box 13 Roanoke, VA 24042	Schuylkill River WWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Unity Township Westmoreland County	PAR206136	Industrial Process Equipment Corp. R. D. 2 Box 318A Donahue Road Latrobe, PA 15650	UNT to Fourmile Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Leetsdale Township Allegheny County	PAR236124	Consolidated Container Co. LLC 5605 N MacArthur Boulevard Suite 360 Irving, TX 75038	Ohio River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Wayne Township Greene County	PAR506115	WSPA Inc. P. O. Box 58 Spraggs, PA 15362	UNT to Dunkard Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Clearfield Township Cambria County	PAR606186	Warefield Auto Wreckers 211 Warefield Lane Patton, PA 16668	Unnamed feeder to Burgoon Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

General Permit Type—PAG-4

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Berks County Caernarvon Township	PAG043585	Ellsworth F. Moore 1499 Elverson Road Elverson, PA 19520	Conestoga Creek WWF	Department of Environmental Protection Southcentral Region 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707
Clinton Township Lycoming County	PAG044999	Carl L. Pfitzenmayer 1214 Brouse Road Montgomery, PA 17752	UNT to West Branch Susquehanna River WWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3666
Cummings Township Lycoming County	PAG044884	Tom Jaskolski 306 Park Avenue Maple Shade, NJ 8052	Little Pine Creek TSF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3666

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Greenwood Township Clearfield County	PAG045146	Matthew and Tabitha Bennett 3259 Mahaffey-Grampian Road Mahaffey, PA 15757	UNT to West Branch Susquehanna River WWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3666
Snyder Township Jefferson County	PAG048827	Frank A. Varischetti R. R. 1, Box 94 Brockway, PA 15824	McEwen Run	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Foster Township McKean County	PAG048456	James Moore Rob Roy Road Derrick City, PA 16727	Unnamed tributary to Foster Brook Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

General Permit Type—PAG-5

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Telephone No.</i>
Menallen Township Fayette County	PAG056183	United Refining Co. of PA 9 Bradley Street P. O. Box 688 Warren, PA 16365	Jennings Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

General Permit Type—PAG-8

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Contact Office & Telephone No.</i>
McVeytown Borough Mifflin County	PAG083571	McVeytown Borough Authority 10 N. Queen St. McVeytown, PA 17051	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 Eric Laur (717) 705-4773

PUBLIC WATER SUPPLY PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Safe Drinking Water Act for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an 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 Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the

Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER**Actions taken under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17).**

Southeast Region: Water Supply Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Permit No. 1502506, Minor Amendment. Public Water Supply.

Applicant **Pennsylvania Suburban Water Company**
762 W. Lancaster Avenue
Bryn Mawr, PA 19010

Township Schuylkill

County **Chester**

Type of Facility PWS

Consulting Engineer CET Engineering Services
1240 N. Mountain Road
Harrisburg, PA 17112

Permit to Construct Issued September 17, 2002

Permit No. 0902506, Minor Amendment. Public Water Supply.

Applicant **Milford Township Water Authority**
1845 Rosenberger Road
Spinnerstown, PA 18968

Township Milford

County **Bucks**

Type of Facility PWS

Consulting Engineer Andersen Engineering Associates, Inc.
306 N. Fifth Street, 2nd floor
Perkasie, PA 18944

Permit to Operate Issued September 17, 2002

Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Operations Permit issued to **Fox Ledge, Inc.**, R. R. 1, Box 555, Honesdale, PA 18431, PWS ID 2646395, Mount Pleasant Township, **Wayne County**, on August 30, 2002, for the operation of facilities approved under Construction Permit 6401501.

Operations Permit issued to **Pennsylvania American Water Co.**, 800 West Hersheypark Drive, Hershey, PA 17033, PWS ID 2450119, Middle Smithfield Township, **Monroe County**, on September 6, 2002, for the operation of facilities approved under Construction Permit 4590513.

Operations Permit issued to **Kline Township Municipal Authority**, 76 South Kennedy Drive, P. O. Box 160, McAdoo, PA 18237, PWS ID 3540014, Borough of McAdoo, **Schuylkill County**, on September 9, 2002, for the operation of facilities approved under Construction Permit No. 5401502.

Operations Permit issued to **Tuscan/Lehigh Dairies, LP**, 110 Manheim Road, Schuylkill Haven, PA 17972, PWS ID 3546501, North Manheim Township, **Schuylkill County**, on September 12, 2002, for the operation of facilities approved under Construction Permit No. 3546501.

Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.

Operations Permit No. Minor Amendment issued to **State College Borough Water Authority**, 1201 West Branch Road, State College, PA 16801, Harris Township, **Centre County**, on September 24, 2002, for the operation of the operation of the new finished water storage tank and emergency power generation station located at the Woodside Drive Filtration Plant.

Operations Permit No. 4902501 issued to **Merck and Company, Inc.**, Cherokee Plant, P. O. Box 600, Danville, PA 17821, Riverside Borough, **Northumberland County**, on September 24, 2002, for the operation of clarifier #2 and sand filter #2 at the Cherokee Plant.

WATER ALLOCATIONS

Actions taken on applications received under the Act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth.

Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

WA 10-1003, Water Allocation, **Pennsylvania American Water Company—Butler District**, 2736 Ellwood Road, New Castle, PA 16101, **Butler County**. Water Allocation Permit issued, granting the right to purchase up to 216,000 gpd from the Pennsylvania American Water Company—Ellwood District. The purchase from the Ellwood plant is to augment the volume of water allowed to be withdrawn from Lake Oneida and the Thorn Run Reservoir. Permit issued September 23, 2002.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a).

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Altoona City	1301 12th Street Suite 100 Altoona, PA 16601-3491	Blair County

Plan Description: The approved plan provides for installation of a sanitary sewer line to connect four existing single-family homes that are currently serviced by existing onlot sewage systems. The 2,000 lineal foot sanitary sewer line extension will be constructed from N. 7th Ave. to N. 10th Ave. between N. 18th St. and N. 20th St. The sanitary sewer line will tie into an existing sewer line in the Keystone area of the city. The sewage will be treated at the Easterly Sewage Treatment Plant, which is operated and maintained by the Altoona City Authority. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Warwick Township	315 Clay Rd. Lititz, PA 17543	Lancaster County

Plan Description: The approved plan provides for development of a hospital and medical offices to generate 58,725 gallons per day in sewage flows tributary to the Warwick Township Municipal Authority sewage collection system and Lititz Borough Wastewater Treatment Plant. The project ID number is A3-36955-240-3. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or

WQM Permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Warwick Township	315 Clay Rd. Lititz, PA 17543	Lancaster County

Plan Description: The project is located on the west side of Highland Drive and the north side of West Millport Road in Warwick Township, Lancaster County. 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.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Rapho Township	971 North Colebrook Rd. Manheim, PA 17545	Lancaster County

Plan Description: The approved plan provides for a church addition for 9,000 total persons per weekend to generate peak daily flows of 6,390 gpd equalized to 3,506 gpd in average daily sewage flows tributary to a sewage treatment facility providing denitrification with discharge to a drip irrigation system. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate. The Department module number is A3-36948-391-2.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Rapho Township	971 North Colebrook Rd. Manheim, PA 17545	Lancaster County

Plan Description: The site is located at the corner of Mount Joy Road and Esbenshade Road (2392 Mt. Joy Road) in Rapho Township, Lancaster County. 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.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Union Township	3904 Finleyville Elrama Rd. Finleyville, PA 15332	Washington County

Plan Description: The approved plan provides for construction of an 800 gallon per day small flow sewage treatment plant to serve the Patricia Iams existing single family home and a second proposed single family home on the same lot. The property is located at 4124 Finleyville Elrama Road. The proposed discharge point is Lobbs Run classified as a WWF. Required NPDES permits or WQM permits must be obtained in the name of the applicant as

appropriate. The Department's review of the sewage facilities revision has not identified significant impacts resulting from this proposal.

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Pulaski Township	R. R. 1 Pulaski, PA 16143	Lawrence

Plan Description: The approved plan provides for modification by eliminating the Frizzleburg Sewage Treatment Plant and replacing it with a pump station and forcemain which will convey Frizzleburg's sewage to the New Bedford system. The Department's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM permits must be obtained in the name of the municipality or authority as appropriate.

HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

Proposed Consent Order and Agreement

C. G. Wood Site

Jamestown Borough, Mercer County

Under section 1113 of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305) (HSCA), the Department of Environmental Protection (Department) has entered into a Consent Order and Agreement (Agreement) with Jamestown Holding Corporation (JHC) concerning its liability at the C. G. Wood Site (site).

In the past, wastes containing hazardous substances were released at the site and these substances contaminated the environment at the site. The Department and the Environmental Protection Agency (EPA) conducted response actions at the site between 1986 and 1998. These response actions included removal of containerized wastes and excavation and wastes and soils/sediments contaminated by hazardous substances. All wastes and contaminated soils/sediments were disposed offsite at proper, permitted disposal facilities.

JHC and site predecessors owned and/or operated the manufacturing facility at the site from at least from 1951 to the present. Because of its ownership of the site during a time when hazardous substances were released into the environment, JHC is a "responsible party" as defined in section 103 of the HSCA (35 P. S. § 6020.103).

Under the terms of this Agreement, JHC will give the Department a conservation easement on several parcels of property at the site. This conservation easement will run with the land as to all successive owners and that will extend into perpetuity.

The specific terms of this settlement are set forth in the Agreement between the Department and JHC. The Department will receive and consider comments relating to the Agreement for 60 days from the date of this public notice. The Department has the right to withdraw its consent to the Agreement if the comments disclose facts or considerations that indicate that the Agreement is inappropriate, improper or not in the public interest. After the public comment period, the Department's settlement with JHC shall be effective upon the date that the

Department notifies JHC, in writing, that this Agreement is final and effective in its present form and that the Department has filed a response to significant written comments to the Agreement, or that no comments were received.

Copies of the Agreement are available for inspection at the Department's Northwest Regional Office. Comments may be submitted to Gary Mechtly, Project Manager, Hazardous Sites Cleanup, Department of Environmental Protection, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6648. TDD users may contact the Department through the Pennsylvania Relay Services at 800-645-5984.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following final reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (Act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of final reports. A final report is submitted to document cleanup of a release of a regulated substance at a site where one of the Act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected.

For further information concerning the final report, contact the Environmental Cleanup Program Manager in the Department Regional Office under which the notice of receipt of a final report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Conrail Parcel, Marcus Hook Borough, **Delaware County**. Bruce R. Cushing, P.G., ST Environmental Professionals, Inc., P. O. Box 1055, Oaks, PA 19456, on behalf of Conrail, 510 Thornall St., Suite 390, Edison, NJ 08837, has submitted a Final Report concerning remediation of site soil contaminated with lead and heavy metals. The report is intended to document remediation of the site to meet Site-Specific Standards.

Former Murata-Wiedemann Facility, Upper Merion Township, **Montgomery County**. Craig Herr, RT Environmental Services, Inc., 215 W. Church Rd., King of Prussia, PA 19406, on behalf of 211 Gulroad Associates, LP, 1200 River Rd. Suite 1303, Conshohocken, PA 19428, has submitted a Final Report concerning remediation of

site groundwater contaminated with solvents. The report is intended to document remediation of the site to meet Site-Specific Standards.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Crown American Logan Valley Mall, Logan Township, **Blair County**. Mountain Research, Inc., 825 25th Street, Altoona, PA 16601 (on behalf of Crown American Properties, LP, Pasquerilla Plaza, Johnstown, PA 15901 and J.C. Penney Company, P. O. Box 10001, Dallas, TX 75301-001) has submitted a revised combined Remedial Investigation and Final Report concerning remediation of site soils and groundwater contaminated with lead, PAHs, benzene and VOCs. The report is intended to document remediation of the site to a combination of the Statewide Health and Site-Specific standards.

Harrisburg International Airport Industrial Area, Lower Swatara Township and Middletown Borough, **Dauphin County**. Rhoads & Sinon LLP, P. O. Box 1146, Harrisburg, PA 17108-1146, on behalf of Susquehanna Area Regional Airport Authority, 513 Airport Authority, 513 Airport Drive, Middletown, PA 17057, submitted a combined Remedial Investigation and Final Report concerning remediation of site soils and groundwater contaminated with PCBs, heavy metals and solvents. The report is intended to document remediation of the site to the Site-Specific standard.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, Administration of the Land Recycling and Environmental Remediation Standards Act (Act) requires the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the Act. 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 refuse 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 of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. The Department may approve

or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program Manager in the Department Regional Office under which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following final reports:

Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

Former Dial Property, Bristol Borough, Bucks County. Michael A. Christie, P.G., Penn Environmental & Remediation, Inc., 2755 Bergey Rd., Hatfield, PA 19440, on behalf of Redevelopment Authority of Bucks County, One N. Wilson Ave., Bristol, PA 19007, has submitted a combined Remedial Investigation and Cleanup Plan concerning the remediation of site soil contaminated with lead, heavy metals, BTEX, PAH and solvents; and groundwater contaminated with heavy metals, BTEX, PAH and solvents. The combined report was approved by the Department on September 18, 2002.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Thomas Nardi Residence, Lower Paxton Township, Dauphin County. Marshall Miller & Associates, 3913 Hartzdale Drive, Suite 1306, Camp Hill, PA 17011 on behalf of Thomas Nardi, 2219 Blue Mountain Parkway, Linglestown, PA 17112 and Kreiser Fuel Service, Inc., R. D. 3, Box 7065, Jonestown, PA 17038, submitted a final report concerning the remediation of site soils contaminated with BTEX and PAHs. The final report demonstrated attainment of the Statewide Health standard and was approved by the Department on September 17, 2002.

Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

Smith Meter, Inc., 1602 Wagner Avenue, Erie, PA 16514-0428, **Erie County,** Environmental Remediation and Recovery (on behalf of Smith Meter, Inc.) has submitted a Final Report concerning the remediation of soil contaminated with lubricating oil. The Final Report was approved. Final report demonstrated attainment of the Statewide Health and Residential Standards and was approved by the Department on September 16, 2002.

HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Permit intent to release a bond under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and Regulations to Operate a Hazardous Waste Treatment, Storage or Disposal Facility.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17111.

Permit No. PAD000796334. FCI USA, Inc., 320 Busser Road, Emigsville, PA 17318-0248, Manchester Township, **York County.** On April 1, 2002, the Department received a request for a bond release for the closure of its permitted hazardous waste container storage area and hazardous waste tank storage area. The Department

has reviewed the request and has determined that it is consistent with 25 Pa. Code § 264a.165.

Persons wishing to comment on the proposed action are invited to submit a statement to the Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110 within 45 days from the date of this public notice. Comments received within this 45-day period will be considered in the formulation of the final determination regarding this application. Responses should include the name, address and telephone number of the writer; and a concise statement to inform the Southcentral Regional Office of the exact basis of any comment and the relevant facts upon which it is based. A public hearing may be held if the Southcentral Regional Office considers the public response significant.

Following the 45-day comment period and/or public hearing the Department will make a final determination regarding the proposed permit action. Notice of this action will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

09-310-064GP: Mangiatore Monte, Inc. (365 Newbold Road, Fairless Hills, PA 19030) on September 17, 2002, for a mobile concrete crusher in Falls Township, **Bucks County.**

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Michael Saffo, Facilities Permitting Chief, (570) 826-2531.

48-321-005GP: Suburban Cleaners (3202 Freemansburg Road, Easton, PA 18045) for construction and operation of a petroleum dry-cleaning operation in Palmer Township, **Northampton County.**

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

GP4-36-03025: Krimes Automotive (302 Ridge Avenue, Ephrata, PA 17522) on September 20, 2002, for operation of a burn off oven under GP4 in Ephrata Township, **Lancaster County.**

GP7-67-03009: The Relizon Co. (P. O. Box 128, York County Industrial Park, Emigsville, PA 17318) on September 20, 2002, for operation of a sheetfed offset lithographic printing press under GP7 in Manchester Township, **York County.**

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Contact: Edward Braun, Chief, (215) 685-9476.

02212: Cramco, Inc. (2200 East Ann Street, Philadelphia, PA 19134) for installation of a #2 oil and natural gas fired boiler in the City of Philadelphia, **Philadelphia County.**

Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Thomas McGinley, New Source Review Chief, (610) 832-6242.

23-0017A: Exelon Generation Co. (1 Industrial Highway, Eddystone, PA 19022) on September 18, 2002, for operation of Boilers No. 1 and 2 in Eddystone Borough, **Delaware County**.

46-0005Q: Merck and Co., Inc. (770 Sumneytown Pike, West Point, PA 19486) on September 19, 2002, for operation of a 750 and 1,500 kW emergency generator in Upper Gwynedd Township, **Montgomery County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark Wejkszner, Acting New Source Review Chief, (570) 826-2531.

35-317-003: Preferred Meal Systems, Inc. (4135 Birney Avenue, Moosic, PA 18507) on September 12, 2002, for construction of a convection cooking oven and associated air cleaning device in Moosic Borough, **Lackawanna County**.

39-318-110: Prior Coated Metals, Inc. (2233 26th Street Southwest, Allentown, PA 18103) on September 16, 2002, for modification of a coil coating line, coating room and associated air cleaning device in Allentown, **Lehigh County**.

Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.

21-03006A: Nestlé Purina PetCare Co. (6509 Brandy Lane, Mechanicsburg, PA 17055) on September 5, 2002, for installation of a boiler and pet food processing line in Hampden Township, **Cumberland County**. The boiler is subject to 40 CFR Part 60, Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.

28-03039: Warrior Roofing Manufacturing of Pennsylvania, LLC (3050 Warrior Road, P. O. Box 40185, Tuscaloosa, AL 35404-0185) on September 5, 2002, for construction of an asphalt roofing manufacturing facility in Greene and Letterkenny Townships, **Franklin County**. This facility is subject to 40 CFR Part 60, Subpart UU—Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture and also 40 CFR Part 60, Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.

65-00943A: Duke Energy Yukon, LLC (5400 Westheimer Court, Houston, TX 77056) on September 17, 2002, for construction of a nominal 640 MW peaking electric generating facility in Sewickley Township, **Westmoreland County**. The facility will consist of eight combustion turbines and one fire water-pump engine.

63-00915A: Mulligan Mining, Inc. (5945 Pudding Stone Lane, Bethel Park, PA 15102) on September 18, 2002, for construction of a coal preparation plant at the Gamelands NW Surface Mine operated by Mulligan Mining, Inc. in Smith Township, **Washington County**. The plant consists of a single, Norket Maxigrid, Model 9200, Portable Coal Crusher/Conveyor unit that is powered by a 177 BHP, Cummings, Model 5.96 BTF, diesel engine.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Devendra Verma, New Source Review Chief, (814) 332-6940.

37-181A: New Castle Industries, Inc. (925 Industrial Street, New Castle, PA 16107) on September 23, 2002, for installation of chrome plating tanks in New Castle, **Lawrence County**.

37-248D: US Can Co. (1902 Old Butler Road, New Castle, PA 16107) on September 17, 2002, for construction of a UV Press Coating Line in New Castle, **Lawrence County**.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Contact: Thomas Barsley, Chief, (215) 685-9428.

02083: Cardone Industries, Inc. (5501 Whitaker Avenue, Philadelphia, PA 19124) for a declining VOC plant-wide applicability limit of 100 tons per year in 2002 to 88 tons per year in 2007 for their 4443 North American Street Facility in the City of Philadelphia, **Philadelphia County**.

02084: Cardone Industries Inc. (5501 Whitaker Avenue, Philadelphia, PA 19124) for a declining VOC plant-wide applicability limit of 360 tons per year in 2002 to 316.8 tons per year in 2007 for their 5660 Rising Sun Avenue and 321 Chew Street Facility in the City of Philadelphia, **Philadelphia County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Thomas McGinley, New Source Review Chief, (610) 832-6242.

46-0202A: Elan (3000 Horizon Drive, King of Prussia, PA 19406) on September 18, 2002, for operation of an emergency electric generator in Upper Merion Township, **Montgomery County**.

15-0066: Nutra-Soil, Inc. (324 East Baltimore Pike, Avondale, PA 19311) on September 19, 2002, for operation of a mushroom compost dryer in London Grove Township, **Chester County**.

46-0037G: Cabot Performance Materials (County Line Road, Boyertown, PA 19512) on September 20, 2002, for operation of a boiler house in Douglass Township, **Montgomery County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

17-309-024: Mount Savage Refractories Co. (P. O. Box 60, Curwensville, PA 16833) on September 10, 2002, for operation of a refractories manufacturing facility and associated air cleaning devices (a scrubber and nine fabric

collectors) on a temporary basis until January 8, 2003, in Pike Township, **Clearfield County**. This plan approval has been extended.

49-307-003A: Istil (USA) Milton, Inc. (P. O. Box 298, Milton, PA 17847) on September 13, 2002, for operation of a steel billet reheat furnace and bar rolling mill until April 30, 2003, in Milton Borough, **Northumberland County**. The deadline for reactivation has been extended.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.

63-906A: Lane Construction Corp. (1 Rutgers Road, Second Floor, Pittsburgh, PA 15205) for installation of a cyclone fabric collector in Donora Borough, **Washington County**. This plan approval was extended.

65-235A: Alcoa, Inc. (100 Technical Drive, Alcoa Center, PA 15069) for installation of a mold filling dust collector and pilot tunnel kiln in Upper Burrell Township, **Washington County**. This plan approval was extended.

30-131A: Foree Oil Co. (8235 Douglas Avenue, Suite 402 LB27, Dallas TX 75225) for installation of combustion engines and gas heated dehydrator at the Foree Compressor Station in Franklin Township, **Green County**. This plan approval was extended.

04-00708A: Arrow Terminals (2701 Route 68, Industry, PA 15052) for modification to their screening operation to remove the requirement to keep daily records of the hours of screen operation, since they are limited to 80,000 tpy of material processed and keep daily records of the amount of material processed at Lot No. 2 in Industry, **Beaver County**. Plan Approval Special Condition #8 has been rewritten as follows: "Daily records of the weight of material screened shall be kept on site for a period of two years and be made available to the Department upon request." The plan approval was modified.

Plan Approvals Denied, Terminated, Modified, Suspended or Revoked under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and the provisions of 25 Pa. Code §§ 127.13b and 127.13c.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Thomas McGinley, New Source Review Chief, (610) 832-6242.

15-0016E: Worthington Steel Co. (45 N. Morehall Rd., Malvern, PA 19355) on September 18, 2002, for operation of a thermal oxidizer in East Whiteland Township, **Chester County**. This plan approval was revoked.

46-0020A: Superior Tube Co. (3900 Germantown Pike, Collegeville, PA 19426) on September 19, 2002, for Radiac cut off saws in Lower Providence Township, **Montgomery County**. This plan approval was revoked.

46-0020: Superior Tube Co. (3900 Germantown Pike, Collegeville, PA 19426) on September 19, 2002, for three fabric filters and one rotoclove in Lower Providence Township, **Montgomery County**. This plan approval was revoked.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

05-05001: Cannondale Corp. (172 Friendship Village Road, Bedford, PA 15522-6600) on September 13, 2002, for operation of a bicycle manufacturing facility in Bedford Township, **Bedford County**.

06-05001: Adelphi Kitchens, Inc. (P. O. Box 10, Robesonia, PA 19551) on September 17, 2002, for operation of a wood kitchen cabinet manufacturing facility in Robesonia Borough, **Berks County**.

36-05023: F and M Hat Co., Inc. (103 Walnut Street, Denver, PA 17517) on September 18, 2002, for operation of a hat manufacturing facility in Denver Borough, **Lancaster County**.

67-03099: Bituminous Paving Materials of York, Inc. (1300 Zinn's Quarry Road, York, PA 17404-3599) on September 1, 2002, for operation of a natural gas-fired batch asphalt plant in West Manchester Township, **York County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

53-00010: National Fuel Gas Supply Corp. (P. O. Box 2061, Erie, PA 16512) on September 4, 2002, for operation of their natural gas storage and transmission facility (Costello Station) in Portage Township, **Potter County**. This State Only Operating Permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

18-00022: Autoline Industries East, Inc. (P. O. Box 210 McElhattan, PA 17748) on August 29, 2002, for operation of their automotive parts remanufacturing facility in Wayne Township, **Clinton County**. This State Only Operating Permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

59-00006: Dominion Transmission, Inc. (625 Liberty Avenue Pittsburgh, PA 15222) on July 26, 2002, for operation of their natural gas storage and transmission facility (Boom Station) in Portage Township, **Potter County**. This State Only Operating Permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

20-00034: Weyerhaeuser ChoiceWood—Titusville Yard Operation (Campbell Road, Titusville, PA 16354) for operation of a lumber processing plant with a wood-fired boiler in Oil Creek Township, **Crawford County**.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

23-00014: Kimberly-Clark Corp. (Front and Avenue of the States, Chester, PA 19103) for modification to their permit to incorporate a change in the maximum temperature allowable for the water flowing into a scrubber at their facility in the City of Chester, **Delaware County**. This change does not result in an increase of emissions.

15-00055: Highway Materials (850 Quarry Road, Downingtown, PA 19335) for modification to their permit to incorporate a change of responsible official and permit contact person for their facility in East Caln Township, **Chester County**. The facility is a Synthetic Minor facility, with emission points at the Hot Mix Asphalt Batch Plant.

23-0003: Tosco Corp. (4101 Post Road, Trainer, PA 19061) on September 19, 2002, for facility major NOx and VOC in Trainer Borough, **Delaware County**.

15-00027: Johnson Matthey, Inc.—Catalytic Systems Division (456 Devon Park Drive, Wayne, PA 19087-1816) administratively amended to incorporate changes based on the appeal of their Title V Operating Permit for their facility in Tredyffrin Township, **Chester County**. The facility's major emission points include six engine test cells, emergency generators, product wash coaters and dryers. The amended Title V Operating Permit will contain additional monitoring, recordkeeping, reporting and work practice standards to kept the facility operating within all applicable air quality requirements.

46-0172: Gemplus Corp. (101 Park Drive, Montgomeryville, PA 18936) on September 5, 2002, for three printing presses in Montgomery Township, **Montgomery County**.

Southcentral Region: Air Quality Program, 909 Elmerston Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.

21-05001: Lear Operations Corp. (P. O. Box 40, Carlisle, PA 17013) administratively amended on September 16, 2002, to reflect a name change of its facility in Carlisle Borough, **Cumberland County**. This is Revision No. 2 of the operating permit.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.

55-00001: Sunbury Generation LLC (1088 Springhurst Drive Green Bay, WI 54304-5495) on August 14, 2002, for operation of Lo NOx retrofit burners on four 525 mmBtu/hr pulverized coal/coke fired utility boilers installed under Plan Approval 55-00001A in Shamokin Dam Borough, **Snyder County**. This Title V Operating Permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions. The Title V Operating Permit was revised to include the terms and conditions of Plan Approval 55-00001A.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.

10-00285: Waste Management Disposal Services of PA, Inc.—Northwest Sanitary Landfill (1436 West Sunbury Road, West Sunbury, PA 16061) administratively amended on September 20, 2002, to incorporate the conditions of Plan Approval 10-00285B for downsizing the design capacity of the enclosed flare at their landfill in Clay Township, **Butler County**. The original Title V Operating Permit was issued on March 24, 1999.

25-00025: General Electric Transportation System (2901 East Lake Road, Erie, PA 16531) administratively amended on September 23, 2002, to incorporate the conditions from Plan Approval 25-00025C for installation

of a new vacuum impregnation system (Source 943) at their Erie Plant in Lawrence Park Township, **Erie County**. The original Title V Operating Permit was issued on November 2, 2000, and revised on January 15, 2002.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Contact: Edward Braun, Chief, (215) 685-9476.

96-039: Baum Printing Co. (9985 Gantry Road, Philadelphia, PA 19115) administratively amended on September 23, 2002, to change the facility contact, permit contact and responsible official for their facility in the City of Philadelphia, **Philadelphia County**. The Synthetic Minor Operating Permit was originally issued on December 14, 1999, and amended on February 28, 2002.

Operating Permits Denied, Terminated, Suspended or Revoked under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.431 and 127.461.

Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.

46-323-018: Superior Tube Co. (3900 Germantown Pike, Collegeville, PA 19426) on September 19, 2002, for a cut off saw in Lower Providence Township, **Montgomery County**. This operating permit was revoked.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (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 and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes; the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

40663026R3. Pacton Corporation (46 Public Square, Suite 600, Wilkes-Barre, PA 18701), renewal of an existing anthracite surface mine operation in Hazle Township, **Luzerne County** affecting 285.0 acres, receiving stream: none. Application received January 11, 2001. Renewal issued September 17, 2002.

19960101R and NPDES Permit PA0223719. City of Philadelphia, Trustee, Acting by the Board of Directors of City Trusts for Girard Estate (21 South 12th Street, Philadelphia, PA 19107-3684), renewal of an existing anthracite surface mine operation in Union, Butler and Conyngham Townships, **Columbia and Schuylkill Counties** affecting 876.0 acres, receiving stream: Mahanoy Creek. Application received March 25, 2002. Renewal issued September 20, 2002.

McMurray District Mining Office: 3913 Washington Road, McMurray, PA 15317, (724) 941-7100.

30341314. NPDES Permit PA0215368, Eberhart Coal Co. (258 Woodside-Old Frame Rd., Smithfield, PA 15478), to revise the permit for the Titus Mine in Dunkard Township, **Somerset County** to add additional surface acres, Surface Acres Proposed 2.64 acres, Underground Acres Proposed N/A, SCP Acres Proposed N/A, CRDP Support Acres Proposed N/A, CRDP Refuse Disposal Acres Proposed N/A, no additional discharges, classified for the following uses: N/A. The first downstream potable water supply intake from the point of discharge is N/A. Permit issued August 27, 2002.

56961302. NPDES Permit PA0214639, K.B. Coal, Inc. (P. O. Box 4091, Hidden Valley, PA 15502), to revise the permit for the Miller Mine in Jenner and Lincoln Townships, **Somerset County** to renew the permit and related NPDES permit, Surface Acres Proposed N/A, Underground Acres Proposed 236.8, SCP Acres Proposed 236.8, CRDP Support Acres Proposed N/A, CRDP Refuse Disposal Acres Proposed N/A, no additional discharges, classified for the following uses: N/A. The first downstream potable water supply intake from the point of discharge is N/A. Permit issued September 3, 2002.

Noncoal Permits Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

52020801. Gerard Barnes (R. R. 2 Box 212, Hawley, PA 18428), commencement, operation and restoration of a small bluestone quarry operation in Lackawaxen Township, **Pike County**, affecting 3.0 acres; receiving stream: tributary to Grassy Island Creek. Application received April 29, 2002. Permit issued September 16, 2002.

7876SM1C4 and NPDES Permit PA0595721. ES-SROC Cement Corp. (Rt. 248 and Easton Road, Nazareth, PA 18064), renewal of NPDES Permit in Whitehall Township, **Lehigh County**, receiving stream: Copley Creek. Application received August 2, 2002. Renewal issued September 16, 2002.

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.

16970802. Rankin & Sons Excavating (R. D. 1, Box 53, Fairmont City, PA 16224). Final bond release for a small noncoal mining operation in Paint Township, **Clarion County**. Restoration of 1.0 acre completed. Receiving streams: unnamed tributary to Paint Creek. Application received July 3, 2002. Final bond release approved: August 28, 2002.

33960803. Lyle B. Kniseley (R. D. 2, Box 6, Reynoldsville, PA 15851). Final bond release for a small noncoal mining operation in Winslow Township, **Jefferson County**. Restoration of 1.0 acre completed. Receiving streams: unnamed tributary to Sandy Lick Creek. Application received May 22, 2002. Final bond release approved: July 30, 2002.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (43 P.S. §§ 151—161); and 25 Pa. Code § 211.124 (relating to blasting activity permits). Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

Blasting Permits Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.

45024064. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431), construction blasting in Middle Smithfield Township, **Monroe County** with an expiration date of August 17, 2003. Permit issued September 18, 2002.

21024047. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting in Lemoyne Borough, **Cumberland County** with an expiration date of September 29, 2003. Permit issued September 18, 2002.

360240102. Keystone Blasting Service (381 Reifsnnyder Road, Lititz, PA 17543), construction blasting in Mount Joy Township, **Lancaster County** with an expiration date of August 29, 2007. Permit issued September 18, 2002.

52024020. Joseph Zamborsky (107 Glen Combe Circle, Milford, PA 18337), construction blasting in Dingmans Township, **Pike County**, with an expiration date of December 31, 2002. Permit issued September 18, 2002.

45024063. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431), construction blasting in Smithfield Township, **Monroe County** with an expiration date of August 16, 2003. Permit issued September 19, 2002.

06024040. J. Roy's, Inc. (Box 125, Bowmansville, PA 17507), construction blasting in Robeson Township, **Berks County** with an expiration date of December 12, 2003. Permit issued September 19, 2002.

360240101. J. Roy's, Inc. (Box 125, Bowmansville, PA 17507), construction blasting in Paradise Township, **Lancaster County** with an expiration date of December 31, 2003. Permit issued September 19, 2002.

40024019. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431), construction blasting in White Haven Borough, **Luzerne County** with an expiration date of August 16, 2003. Permit issued September 19, 2002.

Persons aggrieved by an 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 Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the

Pennsylvania Bulletin, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341(a)).

Except as otherwise noted, the Department certifies that the construction and operation herein described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State Water Quality Standards.

Persons aggrieved by an action may appeal, 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 Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law (35 P.S. §§ 691.1—691.702) 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: Water Obstruction and Encroachment Permits issued for Small Projects do not include 401 Certification, unless specifically stated in the description.)

Permits Issued and Actions on 401 Certifications

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.

E51-186. Delaware River Port Authority, One Port Center, Suite 1101, 2 Riverside Drive, Camden, NJ 08101-1949, City and **County of Philadelphia**, ACOE Philadelphia District.

To construct and maintain an Intermodal Terminal Facility within the 100-year floodplain of the Delaware River (WWF-MF). Work also includes the excavation of two longitudinal channels along the proposed tracks for the collection of stormwater from the site. The site is located on a portion of the Philadelphia Naval Base (the former Mustin Field) at the Philadelphia Naval Business Center, now East End Commerce Park in South Philadelphia (Philadelphia, PA-NJ Quadrangle N: 3.25 inches; W: 2.75 inches).

E09-816. Opus East, LLC, 620 West Germantown Pike, Suite 150, Plymouth Meeting, PA 19462, Bristol Township, **Bucks County**, ACOE Philadelphia District.

To place and maintain fill in 1.41 acres of wetlands (PFO-PEM) at four different locations to facilitate the construction of four warehouse buildings and associated parking facilities at the Keystone Industrial Park Phase (111). The site work also includes the modification of an existing culvert, which carries Newportville Road across an unnamed tributary of Neshaminy Creek (WWF-MF), the work authorized by a General Permit (GP070902312) to Pennsylvania Department of Transportation. This site is located at the southeast corner of the Newportville and Ford Roads (Beverly, PA-NJ Quadrangle N: 20.65 inches; W: 3.25 inches).

Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

E48-314. Department of Conservation and Natural Resources, Jacobsburg State Park, 836 Jacobsburg Road, Wind Gap, PA 18091. Bushkill Township, **Northampton County**, Army Corps of Engineers Philadelphia District.

To construct and maintain a streambank stabilization and habitat improvement project consisting of structural and soil bioengineering stabilization measures and two rock vanes in and along a 680 LF section of Bushkill Creek. The project is located in Jacobsburg State Park, approximately 0.5 mile west of the Belfast Exit on SR 0033 (Wind Gap, PA Quadrangle N: 4.5 inches; W: 4.1 inches).

E35-349. Pennsylvania Department of Transportation, Engineering District 4-0, P. O. Box 111, Scranton, PA 18501. Jefferson Township, **Lackawanna County**, Army Corps of Engineers Philadelphia District.

To remove the existing structure and to construct and maintain a concrete arch bridge having a clear span of 36.6 feet and an underclearance of approximately 11.7 feet across West Branch Wallenpaupack Creek; to construct and maintain a temporary road crossing consisting of twin 54-inch diameter corrugated metal pipes across West Branch Wallenpaupack Creek; and to place fill in 0.01 acre of wetlands within the West Branch Wallenpaupack Creek Watershed. The project is located along SR 2003 approximately 1.7 miles north of SR 0348 (Lake Ariel, PA Quadrangle N: 10.9 inches; W: 15.2 inches).

E52-170. Cablevision of Warwick, LCC, 19 South Street, Warwick, NY 10990. Matamoras Borough, **Pike County**, Army Corps of Engineers Philadelphia District.

To install and maintain the Commonwealth portion of a fiber optics/coaxial cable within a 4-inch diameter conduit attached to the SR 0006 Bridge across the Delaware River. The project is located along Pennsylvania Avenue (SR 0006) (Port Jervis South, NY-NJ-PA Quadrangle N: 22.0 inches; W: 10.0 inches).

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

E01-235. Dennis Bishop, 980 New Road, Ortanna, PA 17320 in Hamiltonban Township, **Adams County**, ACOE Baltimore District.

To construct and maintain a 12-foot by 18-foot residential dwelling addition in the floodway of Middle Creek (HQ-CWF). The site is located on Mount Hope Road approximately 3.0 miles from the intersection of Mount Hope and Carrolls Tract Road (Iron Springs, PA Quadrangle N: 9.45 inches; W: 4.9 inches) in Hamiltonban Township, Adams County.

E06-560. Spring Township, 7800 Shillington Road, Reading, PA 19608 in Spring and Lower Heidelberg Townships, **Berks County**, ACOE Philadelphia District.

To remove the existing structures and to construct and maintain: (1) a 10-foot by 6-foot concrete box culvert at the channel of an unnamed tributary to Cacoosing Creek on Reedy Road located about 900 feet south of its intersection with Evans Hill Road; (2) a new bridge with a clear span of 70.7 feet on a 55 degree skew and an average underclearance of 5.85 feet across Cacoosing Creek to realign Evans Hill Road; and (3) an 18-inch diameter outfall pipe within the 100-year floodway of Cacoosing Creek (Sinking Spring, PA Quadrangle N: 16.5 inches; W: 2.38 inches; N: 17.0 inches; W: 2.06 inches and N: 17.15 inches; W: 2.05 inches respectively) in Spring and Lower Heidelberg Townships, Berks County.

E06-570. Michael Rhodes (Village Commons), 813 South Reading Avenue, Boyertown, PA 19512 in Washington Township, **Berks County**, ACOE Philadelphia District.

To place fill within 0.25 acre of wetlands to construct and maintain: (1) Encroachment (#1a) road crossing an unnamed tributary to Swamp Creek (CWF-MF) with a 45-inch by 29-inch RCPE pipe, a 15-inch storm sewer and an 8-inch sanitary sewer line along Road T at Station 9+47.5 (East Greenville, PA Quadrangle N: 0.9 inch; W: 15.6 inches); (2) Encroachment (#1b) sanitary sewer line crossing an unnamed tributary to Swamp Creek (CWF-MF) 75 feet southeast of Encroachment #1a; (3) Encroachment (#1c) road crossing an unnamed tributary to Swamp Creek (CWF-MF) with a 36-inch diameter ADS-N12 pipe and an 8-inch waterline along Road U at Station 6+60 (East Greenville, PA Quadrangle N: 0.9 inch; W: 15.55 inches); (4) Encroachment (#2d) a road

crossing an unnamed tributary to Swamp Creek (CWF-MF) with a 42-inch by 27-inch RCPE pipe and an 8-inch waterline along Road S at Station 0+00 (East Greenville, PA Quadrangle N: 0.5 inch; W: 15.9 inches); (5) Encroachments (#2a, #2b, #2c and #2e) a culvert extension, a sewer and waterline crossing and a pedestrian bridge crossing an unnamed tributary to Swamp Creek (CWF-MF) approximately 275 feet west of Encroachment #2d; (6) Encroachment (#3) relocate 1547 feet of an unnamed tributary to Swamp Creek (CWF-MF) and construct two road crossings consisting of 70 feet of 18-inch RCP between enwalls 123 and 124 and 2 38-inch by 24-inch RCPE pipes between enwalls 127 and 128 (East Greenville, PA Quadrangle N: 0.9 inch; W: 16.2 inches); (7) Encroachment (#4a) a road crossing an unnamed tributary to Swamp Creek (CWF-MF) with a 4-foot by 11.5-foot concrete box culvert along Eagles Watch South Road at Station 10+00 (East Greenville, PA Quadrangle N: 1.1 inches; W: 16.7 inches); (8) Encroachment (#4b) a road crossing an unnamed tributary to Swamp Creek (CWF-MF) with a 4-foot by 11.5-foot concrete box culvert along Eagles Watch South Road at station 28+75 (East Greenville, PA Quadrangle N: 0.9 inch; W: 16.7 inches); (9) Encroachment (#5) a sewer line crossing an unnamed tributary to Swamp Creek (CWF-MF) approximately 350 feet south of encroachment 4b; (10) Encroachment (#6) road crossing an unnamed tributary to Swamp Creek (CWF-MF) with a 29-inch by 18-inch CMPA pipe at station 22+50 and an 18-inch ADS pipe at station 24+52.5 along Eagles Watch South Road (East Greenville, PA Quadrangle N: 0.7 inch; W: 16.8 inch); (11) Encroachment (#7) sewer line crossing Swamp Creek (CWF-MF) and wetland area (East Greenville, PA Quadrangle N: 0.3 inch; W: 16.1 inches); all for the purpose of developing the Village Commons Subdivision in Washington Township, Berks County.

The applicant is required to provide 0.72 acre of wetland replacement as a part of this project.

E07-351. Altoona Blair County Development Corporation, 4500 Sixth Avenue, Altoona, PA 16602 in Antis Township, **Blair County**, ACOE Baltimore District.

To: (1) relocate 760 feet of a concrete stream channel; (2) construct and maintain a 40-foot long 9-foot by 5-foot concrete box culvert and a 16-foot long, 9-foot by 5-foot concrete box culvert on an unnamed tributary to the Little Juniata River (WWF); (3) eliminate 136 feet of two unnamed tributaries; (4) permanently impact 0.19 acre of forested wetlands and 0.06 acre of emergent wetlands associated with an unnamed tributary to the Little Juniata River; and (5) temporarily impact 0.04 acre of scrub shrub wetlands and 0.03 acre of emergent wetlands associated with an unnamed tributary to the Little Juniata River at a point on the east side of SR 1001 (Old US Route 220) for the purpose of constructing a light industrial park (Bellwood, PA Quadrangle N: 22.2 inches; W: 6.7 inches) in Antis Township, Blair County. Permanent wetland impacts will be mitigated through the construction of 0.27 acre of onsite replacement wetlands. The placement of fill in 344 feet of two unnamed tributaries has been waived under 105.12(a)(2).

E22-440. Pennsylvania Department of Transportation, Engineering District 8-0, 2140 Herr Street, Harrisburg, PA 17103 in Lower Paxton Township, **Dauphin County**, ACOE Baltimore District.

To fill in 0.096 acre of wetland and to construct and maintain: (1) a concrete bridge having a normal clear span of 85.7 feet with a 70 degree skew and a minimum underclearance of 10.7 feet across an unnamed tributary

to Beaver Creek (Nyes Run) (WWF); and (2) a concrete box culvert having a normal clear span of 20 feet with a 61.8 degrees skew and a minimum underclearance of 9 feet at the channel of an adjacent unnamed tributary to relocate Union Deposit Road (SR 3020) located near its intersection with Nye Road (Harrisburg East, PA Quadrangle N: 6.95 inches; W: 1.9 inches) in Lower Paxton Township, Dauphin County. The applicant is required to provide 0.096 acre of replacement wetlands.

E28-300. Donald Martin, 3346 White Church Road, Chambersburg, PA 17201 in Greene Township, **Franklin County**, ACOE Baltimore District.

To construct and maintain a home built within the floodway of Pillman Run (WWF) located approximately 120 feet upstream from White Church Road (Scotland, PA Quadrangle N: 14.5 inches; W: 7.75 inches) in Greene Township, Franklin County.

E28-303. Samuel Yoder, 6275 Maxheimer Road, St. Thomas, PA 17252 in St. Thomas Township, **Franklin County**, ACOE Baltimore District.

To construct and maintain a 16-foot by 56-foot concrete storage tank along an unnamed tributary to Back Creek (WWF) (St. Thomas, PA Quadrangle N: 10.9 inches; W: 2.49 inches) in St. Thomas Township, Franklin County.

E28-304. All-Side, Incorporated, 20 E. Burd Street, Shippensburg, PA 17257 in Greene Township, **Franklin County**, ACOE Baltimore District.

To maintain 90 feet at riprap bank stabilization along the Conococheague Creek (CWF) located upstream of Route 11 bridge (Chambersburg, PA Quadrangle N: 15.5 inches; W: 1.85 inches) in Greene Township, Franklin County.

E31-183. Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110 in Carbon Township, **Huntingdon County**, ACOE Baltimore District.

To remove an existing structure and to construct and maintain an 16-foot by 9-foot reinforced concrete box culvert in the channel of Shoup Run (WWF) at a point adjacent to Route 913 approximately 1 mile upstream of Coalment (Saxton, PA Quadrangle N: 16.65 inches; W: 8.10 inches) in Carbon Township, Huntingdon County.

Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

E02-1375. Dominion Transmission, Inc., 445 West Main Street, Clarksburg, PA 26301. Plum Borough, **Allegheny County**, ACOE Pittsburgh District.

To operate and maintain approximately 4.5 miles of an existing 20-inch natural gas pipeline (LN 25). The pipeline crosses six tributaries to Little Plum Creek (WWF) and a tributary to Bodies Run (WWF). The project starts in Plum Borough at the Allegheny County and Westmoreland border and ends in Plum on the east side of the Allegheny River (the project starts at Murrysville, PA Quadrangle N: 21.7 inches; W: 10.7 inches and ends at New Kensington West, PA Quadrangle N: 6.5 inches; W: 2.1 inches).

E04-285. Dominion Transmission, Inc., 445 West Main Street, Clarksburg, WV 26301. South Beaver Township, Big Beaver Borough and Chippewa Township, **Beaver County**, ACOE Pittsburgh District.

To operate and maintain approximately 12 miles of an existing 30 inch natural gas pipeline (TL-400). The pipeline crosses four tributaries to the North Fork Little Beaver Creek (HQ-CWF), six tributaries to Brush Run

(HQ-CWF), Brush Run (HQ-CWF), Painters Run (HQ-CWF), two tributaries to Clarks Run (tributary to the Beaver River, WWF), one tributary to Clarks Run (tributary to the North Fork Little Beaver Creek, HQ-CWF), Clarks Run (tributary to the Beaver River, WWF) and Stockman Run (WWF). The pipeline also crosses two wetlands: one is in the Brush Run Watershed and the other is in the Clarks Run Watershed. The project starts at the Pennsylvania and Ohio border and ends at the Big Beaver Borough and Koppel Borough border (the project starts at East Liverpool North PA-WVA Quadrangle N: 20.8 inches; W: 2.7 inches and ends at Beaver Falls, PA N: 15.1 inches; W: 11.1 inches).

Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.

E25-656. Todd M. Benjamin, 3619 Brierwood Drive, Erie, PA 16510. Benjamin Channel Cleaning of tributary to Lake Erie, in Harborcreek Township, **Erie County**, ACOE Pittsburgh District (Harborcreek, PA Quadrangle N: 2.2 inches; W: 16.8 inches).

To excavate and maintain approximately 165 feet of the channel of a tributary to Lake Erie between Brierwood Drive and Crestwood Drive west of Nagle Road.

E33-208. Clearfield-Jefferson Counties Regional Airport Authority, P. O. Box 299, Falls Creek, PA 15840. DuBois-Jefferson County Airport Runway Expansion, in Washington Township, **Jefferson County**, ACOE Pittsburgh District (Hazen, PA Quadrangle N: 10.1 inches; W: 2.3 inches).

To fill 0.21 acre of wetlands for the extension of the existing runway at the DuBois-Jefferson County Airport approximately 1.7 miles southeast of the intersection of SR 310 and SR 830. Project includes creation of 0.21 acre of replacement wetland on site adjacent to Kyle Run.

ENVIRONMENTAL ASSESSMENTS

Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

EA36-005. Thomas E. Smith, King & Queen Farm, 1600 West Route 897, Denver, PA 17517 in West Cocalico Township, **Lancaster County**, ACOE Baltimore District.

To the installation and maintenance of a footer drain outfall within the floodway of an unnamed tributary to Cocalico Creek (HQ-WWF) (Womelsdorf, PA Quadrangle N: 6.5 inches; W: 5.9 inches) in West Cocalico Township, Lancaster County.

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D45-275. Camelback Ski Corporation, P. O. Box 168, Tannersville, PA 18372. To remove approximately 2 acres of accumulated silts and sediments from the reservoir of Barney's Pond Dam. The dam is located across a tributary to Pocono Creek (HQ-CWF) at the Camelback Ski Resort (Mount Pocono, PA Quadrangle, N: 9.80 inches; W: 14.35 inches), Pocono Township, **Monroe County**.

D45-182. Paradise Falls Lutheran Association, 1320 Paradise Falls, Cresco, PA 18326. Paradise Township, **Monroe County**, ACOE Philadelphia District.

Project proposes to remove approximately 7 acres of accumulated silts and sediments from the reservoir of Lake Crawford Dam. The dam is located across Paradise Creek (HQ-CWF) at the Paradise Falls Lutheran Association Center (Mount Pocono, PA Quadrangle, N: 20.1 inches; W: 2.4 inches).

STORAGE TANKS

SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101 and 6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Land Recycling and Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.

<i>SSIP Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
02-24-002	Andrew M. Redmond Weyerhaeuser—Johnsonburg Mill 100 Center Street Johnsonburg, PA 15848	Elk	Johnsonburg	1 AST storing sodium hydroxide	34,000 gallons

[Pa.B. Doc. No. 02-1743. Filed for public inspection October 4, 2002, 9:00 a.m.]

Extension of General NPDES Permit for Stormwater Discharges Associated with Construction (PAG-2)

Under the authority of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and sections 1905-A, 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-5, 510-17 and 510-20), the Department of Environmental Protection (Department) is extending for 3 months the availability of the current General NPDES Permit for Stormwater Discharges Associated with Construction Activities (PAG-2). The current general permit is scheduled to expire at 12 p.m. on October 9, 2002. The extension will be effective on October 10, 2002. The Department is extending the availability of this permit to adequately address public comments received by the Department regarding the renewal of PAG-2, the draft PAG-14 permit and the Department's Comprehensive Stormwater Management Policy.

The existing PAG-2 permit documents will continue to be available from the Department's regional offices and local County Conservation Districts until they are replaced or updated. In addition, the permit documents are on file at the Department of Environmental Protection, Bureau of Water Watershed Management, 10th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101. The package is also available on the Department's website (www.dep.state.pa.us).

The permit documents can also be obtained by contacting Shirley Rodrock, (717) 787-6827, e-mail at srodrock@state.pa.us. Persons with a disability may use the AT&T Relay Service (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

DAVID E. HESS,
Secretary

[Pa.B. Doc. No. 02-1744. Filed for public inspection October 4, 2002, 9:00 a.m.]

DEPARTMENT OF HEALTH

Decisions on Requests for Exceptions to Health Care Facility Regulations

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), effective June 6, 1998, the Department of Health (Department) has published in the *Pennsylvania Bulletin* all requests by entities licensed under the Health Care Facilities Act (35 P. S. §§ 448.101—448.904b), for exceptions to regulations contained in 28 Pa. Code Part IV Health Facilities, Subparts B—G.

Section 51.33(d) provides that the Department will publish notice of all approved exceptions on a periodic basis. The Department has determined that it will publish notice of all exceptions, both approved and denied. The following list contains the decisions made on exception requests published in the *Pennsylvania Bulletin* from May 1, 2002, through August 31, 2002. Future publications of decisions on exception requests will appear on a quarterly basis.

Requests for additional information on the exception requests and the Department's decisions should be made to the relevant division of the Department. Inquiries regarding hospitals and ambulatory surgical facilities should be addressed to Sandra Knoble, Director, Division of Acute and Ambulatory Care, P. O. Box 90, Harrisburg, PA 17108. Inquiries regarding long-term care facilities should be addressed to Susan Getgen, Director, Division of Nursing Care Facilities, P. O. Box 90, Harrisburg, PA 17108.

Persons with a disability who want additional information or who require an alternative format of this document (for example, large print, audiotope, Braille) should contact the relevant division of the Department as listed previously, V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Services at (800) 654-5984.

Exception Requests—Hospitals

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Req Published</i>	<i>Decision</i>
Armstrong County Memorial Hospital	28 Pa. Code § 51.3(a)	notification		granted
Chambersburg Hospital	28 Pa. Code § 51.3(c)	notification	7/20/02	granted
Grandview Hospital	28 Pa. Code § 51.6	identification of personnel	6/9/01	granted
Holy Spirit Hospital	28 Pa. Code § 51.6(b)	identification of personnel	5/18/02	granted
Armstrong County Memorial Hospital	28 Pa. Code § 51.23	PET scanning services	4/27/02	granted
Clearfield Hospital	28 Pa. Code § 51.23	PET scanning services	4/27/02	granted
Alle-Kiski Med Ctr	28 Pa. Code § 51.23	PET scanning services	5/18/02	granted
Greene County Memorial Hospital	28 Pa. Code § 51.23	PET scanning services	5/18/02	granted
Phoenixville Hospital	28 Pa. Code § 51.23	PET scanning services	7/6/02	granted
Doylestown Hospital	28 Pa. Code § 51.23	PET scanning services	7/20/02	granted
Doylestown Hospital	28 Pa. Code § 51.33(c)	public comment period	4/6/02	granted
Semper Care Hospital	28 Pa. Code § 107.2	medical staff membership	8/18/01	granted
Jeanes Hospital	28 Pa. Code § 107.2	medical staff membership	4/6/02	granted
Clearfield Hospital	28 Pa. Code § 107.2	medical staff membership	4/27/02	granted
Temple University Children's Medical Center	28 Pa. Code § 107.2	medical staff membership	5/11/02	granted
Temple University Hospital	28 Pa. Code § 107.2	medical staff membership	5/11/02	granted
Ashland Regional MC	28 Pa. Code § 107.2	medical staff membership	5/18/02	granted
Tenet Healthcare Graudate Hospital	28 Pa. Code § 107.2	medical staff membership	8/17/02	granted
Tenet Healthcare MCP Hospital	28 Pa. Code § 107.2	medical staff membership	8/17/02	granted
Tenet Healthcare Parkview Hospital	28 Pa. Code § 107.2	medical staff membership	8/17/02	granted
Tenet Healthcare Graudate Hospital	28 Pa. Code § 107.2	medical staff membership	8/17/02	granted
Tenet Healthcare MCP Hospital	28 Pa. Code § 107.2	medical staff membership	8/17/02	granted
Tenet Healthcare Parkview Hospital	28 Pa. Code § 107.2	medical staff membership	8/17/02	granted
Tenet Healthcare Warminster Hospital	28 Pa. Code § 107.2	medical staff membership	8/17/02	granted
North Phila. Health System	28 Pa. Code § 107.4(a)	medical staff status	7/20/02	granted
Gettysburg Hospital	28 Pa. Code § 107.26(b)(2)	tissue committee meetings	7/6/02	denied
Jefferson Regional Medical Center	28 Pa. Code § 107.61	written orders	8/17/02	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Req Published</i>	<i>Decision</i>
Sharon Regional Health System	28 Pa. Code § 107.62	oral orders	4/6/02	denied
Carlisle Reg Med Center	28 Pa. Code § 107.62	oral orders	8/17/02	denied
Jefferson Regional Medical Center	28 Pa. Code § 107.62	oral orders	8/17/02	granted
Saint Vincent Health Ctr	28 Pa. Code § 107.62(b)	oral orders	5/11/02	granted
Monongahela Valley Hospital	28 Pa. Code § 107.64	administration of drugs	5/18/02	granted in part
Holy Spirit Hospital	28 Pa. Code § 107.64	administration of drugs	7/20/02	granted
Jameson Memorial Hospital	28 Pa. Code § 125.14(a)	phy. pronouncement of death	9/14/02	granted
Nason Hospital	28 Pa. Code § 137.21(b)(5)	policies and procedures for obstetrics	8/17/02	granted
Graduate Hospital	28 Pa. Code § 143.4	med. appraisal of podiatric patients	8/18/01	denied
Nason Hospital	28 Pa. Code § 153.1	minimum construction stds (7.4.A6)	1/19/02	granted
Doylestown Hospital	28 Pa. Code § 153.1	minimum construction stds 10.8—personal care unit for inpatients, 10.15.A5—patient rooms handwashing stations, 10.24.A22—minimum ceiling height, 10.31.E2.d—bedpan flushing devices	4/6/02	granted
Hamot Medical Center	28 Pa. Code § 153.1	minimum construction stds 7.7.B2—PACU bed space, 7.3.A3—ICU patient space	4/13/02	not necessary
Kane Community Hospital	28 Pa. Code § 153.1	minimum construction stds 7.2.B10—exam/treatment room	4/13/02	granted
Shamokin Area Community	28 Pa. Code § 153.1	minimum construction stds 7.7.A2—OR size, 7.7.C6—soiled workroom	4/20/02	granted
Bariatric Care Center of Pa	28 Pa. Code § 153.1	minimum construction stds 7.31.E2.d—bedpan flushing devices	4/20/02	granted
Shamokin Area Community Hospital	28 Pa. Code § 153.1	minimum construction stds Hospital 7.2.A3—window in each patient room, 7.28.A10—operable windows in patient rooms and 12-3.8.1—special features of windows in patient rooms	5/11/02	denied
Good Samaritan Regional MC	28 Pa. Code § 153.1	minimum construction stds 10.9—ADL Unit	5/18/02	granted
Abington Mem Hosp	28 Pa. Code § 153.1	minimum construction stds 7.3.E9	7/6/02	denied
Jeanes Hosp	28 Pa. Code § 153.1	minimum construction stds 10.6.A—dining/recreation/day space, 10.15.A2—pt room size, 10.15.A6—bathroom size, 10.15.A7—wardrobe/closet/locker size	7/6/02	granted
Sacred Heart	28 Pa. Code § 153.1	minimum construction stds 7.6.C—seclusion treatment room	7/6/02	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Req Published</i>	<i>Decision</i>
Abington Memorial Hosp	28 Pa. Code § 153.1	minimum construction stds 7.2.A4, 7.3.A8, 7.8.A2(5)—handwashing stations	7/20/02	granted
Barnes Kasson County Hospital	28 Pa. Code § 153.1	minimum construction stds 7.13.C7—pt dressings areas, showers, lockers, 7.13.D4—activities of daily living teaching area	7/20/02	granted
Coordinated Health System—Orthopedic Specialty Center	28 Pa. Code § 153.1	minimum construction stds 7.7.A1—general OR size, 7.7.A2—special procedures OR size, 7.7.A3—sink with plaster trap, 7.7.B1—pre-op holding bay size, 7.7.B2—PACU handwashing stations	7/20/02	denied
Coordinated Health System—Orthopedic Specialty Ctr	28 Pa. Code § 153.1	minimum construction stds 7.7.B2—PACU pt bed space, 7.7.C10—equipment storage room, 7.7.C14—phase II recovery pt space, pt toilet, staff toilet, 7.7.C17—pt holding area	7/20/02	denied
Coordinated Health System—Orthopedic Specialty Ctr	28 Pa. Code § 153.1	minimum construction stds 7.7.C20—area for prep & exam of frozen sections, 7.32.E—electrical standards/receptacles, Table 7.5—medical gases	7/20/02	denied
Community Hospital of Lancaster	28 Pa. Code § 153.1	minimum construction stds 7.7.A1—general OR size	7/20/02	not necessary
Holy Spirit Hospital	28 Pa. Code § 153.1	minimum construction stds 7.7.A4—room for cystoscopic & other endo-urologic procedures	7/20/02	granted
Lifecare Hospitals of Pittsburgh	28 Pa. Code § 153.1	minimum construction stds 7.6.B5 (relating to bathroom facilities in psychiatric care unit) 7.6.C (relating to seclusion treatment rooms in psychiatric	9/7/02	granted
Abington Memorial Hospital	28 Pa. Code § 153.1	minimum construction stds 7.3.E9—aisle width	9/14/02	granted
St. Luke's Hospital Quakertown	28 Pa. Code § 153.1	minimum construction stds 7.33—hyperbaric suite	9/14/02	not necessary

Exception Requests—Ambulatory Surgical Facilities

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Req Published</i>	<i>Decision</i>
Mercy Surgery Ctr	28 Pa. Code § 551.21(a)(2)	recovery time	7/20/02	denied
Jeanette District Memorial Hospital	28 Pa. Code § 553.2	ownership	8/17/02	granted
Gettysburg Hospital	28 Pa. Code § 553.2	ownership	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 553.3	governing body resp.	5/18/02	denied
Jeanette District Memorial Hospital	28 Pa. Code § 553.3	governing body resp.	8/17/02	granted
Gettysburg Hospital	28 Pa. Code § 553.4	other functions	5/18/02	denied
Sal P. Calabro, MD, Cosmetic Surgery	28 Pa. Code § 553.4(h)	medical director	5/18/02	granted
Gettysburg Hospital	28 Pa. Code § 553.12	Patient Bill of Rights	5/18/02	denied

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Req Published</i>	<i>Decision</i>
Gettysburg Hospital	28 Pa. Code § 553.31	Implementation administrative resp.	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 555.1	medical staff	5/18/02	denied
Jeanette District Memorial Hospital	28 Pa. Code § 555.2	medical staff membership	8/17/02	granted
Jeanette District Memorial Hospital	28 Pa. Code § 555.3	req. for membership and privileges	8/17/02	granted
Jeanette District Memorial Hospital	28 Pa. Code § 555.4	clinical activities & duties of PAs and CRNPs	8/17/02	granted
Jeanette District Memorial Hospital	28 Pa. Code § 555.11	written orders	8/17/02	granted
Jeanette District Memorial Hospital	28 Pa. Code § 555.12	oral orders	8/17/02	granted
Jeanette District Memorial Hospital	28 Pa. Code § 555.13	administration of drugs	8/17/02	granted
Laurel Laser & Surgery Center	28 Pa. Code § 565.11	radiology services	4/20/02	granted
Lancaster NeuroScience & Spine Assoc	28 Pa. Code § 571.1	minimum construction stds 9.5.F5.h—equipment Storage room	4/20/02	granted
Mahoning Valley ASC	28 Pa. Code § 571.1	minimum construction stds 9.5.F2—OR size for laser procedures, 9.5.F4—convenient patient access to toilets	5/18/02	granted
Pittsburgh Specialty Hospital	28 Pa. Code § 571.1	minimum construction stds 9.5.D1—covered entrance, 9.5.H2.a(3)—ceiling finishes, 9.5.F2.d—minimum OR size	5/18/02	granted
	28 Pa. Code § 51.33(c)	exceptions—waiver of comment period	5/18/02	granted
Grandview Surgery & Laser Center	28 Pa. Code § 571.1	minimum construction stds 9.5.F2.d—Class C OR size	8/17/02	granted
HealthSouth Surgery Center of Lancaster	28 Pa. Code § 571.1	minimum construction stds 9.5.F2.d—Class C OR size	8/17/02	granted
Image Associates	28 Pa. Code § 571.1	minimum construction stds 9.5.E1—soiled workroom	9/14/02	granted
Gettysburg Hospital	28 Pa. Code § 557.1	QA policy	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 557.2	QA plan	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 557.3	QA program	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 557.4	QA committee	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 559.2	director of nursing	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 563.2	med records, organization and staffing	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 563.12	medical records, form and content		
Gettysburg Hospital	28 Pa. Code § 565.12	radiology, service policy	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 565.14	radiology policies	5/18/02	denied
Gettysburg Hospital	28 Pa. Code § 567.2	infection control, comm.	5/18/02	denied

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<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Req Published</i>	<i>Decision</i>
Gettysburg Hospital	28 Pa. Code § 569.11	internal disaster plan, firefighting service	5/18/02	denied

Exception Requests—Birthing Centers

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Req Published</i>	<i>Decision</i>
The Midwife Center	28 Pa. Code § 501.81(a)(2)	fire safety standards	7/27/02	granted

Exception Requests—Nursing Care Facilities

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Req Published</i>	<i>Decision</i>
Progressive Care Center	28 Pa. Code § 201.18(e)	management	6/8/02	temp approval
RMH-HB/SNF	28 Pa. Code § 201.18(e)	management	6/8/02	temp approval
Saint Luke Manor	28 Pa. Code § 205.6(a)	function of building	3/23/02	granted
Sugar Creek Station Skilled Nsng & Rehab Center	28 Pa. Code § 205.6(a)	function of building	4/6/02	granted
Pine Run Health Center	28 Pa. Code § 205.6(a)	function of building	4/6/02	rescinded
Jewish Home of Greater Hbg	28 Pa. Code § 205.10(c)	doors	4/6/02	temp app for private rooms/ permanent app for semi private
Countryside Conv. Home Limited Partnership	28 Pa. Code § 205.6(a)	function of building	4/13/02	granted
Mercy Center Nsng Unit, Inc.	28 Pa. Code § 205.6(a)	function of building	4/27/02	granted
Health Care Center at White Horse Village	28 Pa. Code § 205.6(a)	function of building	5/18/02	granted
St. Anne's Home	28 Pa. Code § 205.6(a)	function of building	6/8/02	granted
The Williamsport Home	28 Pa. Code § 205.6(a)	function of building	6/8/02	granted
Rydal Park of Phila. Presbytery	28 Pa. Code § 205.6(a)	function of building	6/15/02	granted
Beacon Ridge, A Choice Comm.	28 Pa. Code § 205.6(a)	function of building	6/22/02	granted
Village at Penn State Hlth Care Ctr	28 Pa. Code § 205.6(a)	function of building	7/20/02	granted
Garden Spot Village	28 Pa. Code § 205.6(a)	function of building	8/3/02	granted
Manatawny Manor	28 Pa. Code § 205.6(a)	function of building	8/3/02	granted
Ohesson Manor	28 Pa. Code § 205.69(a)	function of building	8/3/02	denied
Luther Crest Nursing Care Center	28 Pa. Code § 205.6(a)	function of building	8/3/02	granted
Westminster Village	28 Pa. Code § 205.6(a)	function of building	8/3/02	granted
The Lutheran Home at Topton	28 Pa. Code § 205.6(a)	function of building	8/3/02	granted
ManorCare Health Services—Easton	28 Pa. Code § 205.6(a)	function of building	8/3/02	granted
Frey Village	28 Pa. Code § 205.6(a)	function of building	8/17/02	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Req Published</i>	<i>Decision</i>
Susquehanna Lutheran Village	28 Pa. Code § 205.6(a)	function of building	8/17/02	granted
Dock Terrace	28 Pa. Code § 205.9(a)	corridors	4/27/02	denied
Fox Subacute Center	28 Pa. Code § 205.19(b)	windows and windowsills	8/3/02	granted
The Communities at Indian Haven	28 Pa. Code § 205.32(a)	janitor's closet	8/3/02	no longer req
The Communities at Indian Haven	28 Pa. Code § 205.33(a)	utility room	8/3/02	no longer req
The Communities at Indian Haven	28 Pa. Code § 205.36(a)	bathing facilities	8/3/02	no longer req

ROBERT S. ZIMMERMAN, Jr.,
Secretary

[Pa.B. Doc. No. 02-1745. Filed for public inspection October 4, 2002, 9:00 a.m.]

Request for Exceptions; Long-Term Care Nursing Facilities

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

The Springs at the Fountains
Two Franklin Town Boulevard
Philadelphia, PA 19103

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.25(b) (relating to kitchen):

Valley View Haven, Inc.
4702 E. Main Street
Bellville, PA 17004-9251

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, e-mail paexcept@health.state.pa.us.

Persons who wish to comment on these exception requests may do so by sending a letter by mail, e-mail or facsimile to the Department at the address previously listed.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who require an alternative format of this document or who wish to comment in an alternative format (for example, large print, audiotope, Braille), should contact the Division of Nursing Care Facilities at the previously listed address or phone number or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

ROBERT S. ZIMMERMAN, Jr.,
Secretary

[Pa.B. Doc. No. 02-1746. Filed for public inspection October 4, 2002, 9:00 a.m.]

DEPARTMENT OF LABOR AND INDUSTRY

Innovation and Expansion Grant to Provide Job Creation Assistance on Behalf of Persons with Significant Disabilities in Armstrong and Butler Counties; OVR RFP 2002-12

The Department of Labor and Industry, Office of Vocational Rehabilitation (OVR), under the Rehabilitation Act of 1973, as amended in 1992, announces that competing applications to establish, expand or improve community rehabilitation programs serving persons with the most significant disabilities will be accepted. This competition is authorized under the Rehabilitation Act of 1973, as amended.

Funding for this competition is under the auspice of the State Board of Vocational Rehabilitation and the OVR, which will serve as administrator and fiscal agent for the grant awarded under this competition. Applications will be written to accomplish the following areas of emphasis:

- To increase employment and career opportunities for persons with significant disabilities in mainstream industry jobs in Armstrong and Butler Counties.
- To stimulate development, retention and growth of commerce and industry in Armstrong and Butler Counties.

Service Information

This competition will result in one award and funding for a 4-year period beginning February 1, 2003. Activities allowable under this grant competition include disbursement and management of project moneys through the OVR grantee to qualified local businesses for purchase of equipment. This equipment must create jobs for and be operated by persons with significant disabilities.

The successful applicant will enter a contract with OVR to serve as the Commonwealth's agent administering a job creation project budget of no more than \$300,000 during the first year of the award. Job creation project budgets will vary during subsequent contract years during the life of the award.

Eligible applicants are recognized Economic Development Groups (EDG), defined as any group, corporation or

consortium which exists for the purpose of providing economic development funding, including capital equipment purchases, in the region for which the EDG has been designed.

For purposes of this competition, an eligible applicant may also be another nonprofit or governmental organization experienced in successfully collaborating with business and industry located in Armstrong and Butler Counties. The collaboration must have been in regard to development of employment, employment opportunities, placement of hard-to-place populations, workforce development or comparable areas of endeavor.

An applicant must have operated in this capacity for a minimum of 3 years in order for the application to be considered for this competition.

An applicant must demonstrate an understanding of the economy, market characteristics and market potential in the service area of Armstrong and Butler Counties.

For purposes of this competition, Job Creation Assistance on Behalf of Persons with Significant Disabilities services focus upon activities that result in increased competitive employment of OVR-eligible persons with significant disabilities.

The grantee funded under this competition must comply with the following:

- Individuals placed in employment through this program must be eligible OVR persons.
- Job creation services must be implemented with the close coordination of the OVR New Castle District Office functioning in a leadership capacity. Proposals submitted for consideration under this grant competition must reflect this ongoing joint effort.
- The OVR District Administrator, OVR New Castle District Office, or that person's designee, must personally be involved in all decisions regarding provision of equipment to applicant businesses. The District Administrator must cosign all disbursements made by the grantee to qualifying businesses.

Application Information

Applications received by 5 p.m. on November 15, 2002, which are complete and conform to established specifications, will be accepted for review. Applications submitted after this date and time will be ineligible for consideration.

Applications will be evaluated by a panel of reviewers convened for that purpose.

The effective dates for the contract will be February 1, 2003, through January 31, 2004. Final awards made through this competition are subject to the approval of the Executive Director of the OVR.

A complete application package which includes more detailed information is available by contacting Jacqueline B. Lucas, Office of Vocational Rehabilitation, Contracts and Grants Management Section, 1521 North Sixth Street, Harrisburg, PA 17102, (717) 787-7016, fax (717) 705-9345, TDD (717) 783-8917.

Preproposal Conference

A preproposal conference to deal specifically with technical questions regarding applications will be held for applicants on Wednesday, October 16, 2002, 9 a.m. at the New Castle OVR District Office, 100 Margaret Street, New Castle, PA. Copies of the application package will also be available at this conference.

Persons planning to attend the conference who have special needs to participate fully should contact Jacqueline B. Lucas at (717) 787-7016 no later than 1 week in advance of the conference date.

JOHNNY J. BUTLER,
Secretary

[Pa.B. Doc. No. 02-1747. Filed for public inspection October 4, 2002, 9:00 a.m.]

Innovation and Expansion Grant to Provide Job Creation Assistance on Behalf of Persons with Significant Disabilities in Beaver and Lawrence Counties; OVR RFP 2002-11

The Department of Labor and Industry, Office of Vocational Rehabilitation (OVR), under the Rehabilitation Act of 1973, as amended in 1992, announces that competing applications to establish, expand or improve community rehabilitation programs serving persons with the most significant disabilities will be accepted. This competition is authorized under the Rehabilitation Act of 1973, as amended.

Funding for this competition is under the auspice of the State Board of Vocational Rehabilitation and the OVR, which will serve as administrator and fiscal agent for the grant awarded under this competition. Applications will be written to accomplish the following area of emphasis:

- To increase employment and career opportunities for persons with significant disabilities in mainstream industry jobs in Beaver and Lawrence Counties.
- To stimulate development, retention and growth of commerce and industry in Beaver and Lawrence Counties.

Service Information

This competition will result in one award and funding for a 4-year period, beginning February 1, 2003. Activities allowable under this grant competition include disbursement and management of project moneys through the OVR grantee to qualified local businesses for purchase of equipment. The equipment must create jobs for, and be operated by, persons with significant disabilities.

The successful applicant will enter a contract with the OVR to serve as the Commonwealth's agent administering a job creation project budget of no more than \$300,000 during the first year of the award. Job creation project budgets will vary during subsequent contract years during the life of the award.

Eligible applicants are recognized Economic Development Groups (EDG), defined as any group, corporation or consortium which exists for the purpose of providing economic development funding, including capital equipment purchases, in the region for which the EDG has been designed.

For purposes of this competition, an eligible applicant may also be another nonprofit or governmental organization experienced in successfully collaborating with business and industry located in Beaver and Lawrence Counties. The collaboration must have been in regard to development of employment, employment opportunities, placement of hard-to-place populations, workforce development or comparable areas of endeavor.

An applicant must have operated in these capacities for a minimum of 3 years for its application to be considered for this competition.

An applicant must demonstrate an understanding of the economy, market characteristics and market potential in the service area that encompasses Beaver and Lawrence Counties.

For purposes of this competition, Job Creation Assistance on Behalf of Persons with Significant Disabilities services focus upon activities that result in increased competitive employment of OVR-eligible persons with significant disabilities.

The grantee funded under this competition must comply with the following:

- Individuals placed in employment through this program must be eligible OVR customers.
- Job Creation services must be implemented with the close coordination of the OVR New Castle District Office functioning in a leadership capacity. Proposals submitted for consideration under this grant competition must reflect this ongoing joint effort.
- The OVR District Administrator, OVR New Castle District Office, or that person's designee, must personally be involved in all decisions regarding provision of equipment to applicant businesses. The District Administrator must cosign all disbursements made by the grantee to qualifying businesses.

Application Information

Applications received by 5 p.m. on November 15, 2002, which are complete and conform to established specifications, will be accepted for review. Applications submitted after this date and time will be ineligible for consideration.

Applications will be evaluated by a panel of reviewers convened for that purpose.

The effective dates for the contract will be February 1, 2003, through January 31, 2004. Final awards made through this competition are subject to the approval of the Executive Director of the OVR.

A complete application package, which includes more detailed information, is available by contacting Jacqueline Lucas, Office of Vocational Rehabilitation, Contracts and Grants Management Section, 1521 North Sixth Street, Harrisburg, PA 17102, (717) 787-7016, fax (717) 705-9345, TDD (717) 783-8917.

Preproposal Conference

A preproposal conference to deal specifically with technical questions regarding applications will be held for applicants on Wednesday, October 16, 2002, at 9 a.m. at the New Castle OVR District Office, 100 Margaret Street, New Castle, PA.

Copies of the application package will also be available at this conference. Persons planning to attend the Conference who have special needs to be considered to participate fully in the conference, should contact Jacqueline B. Lucas at (717) 787-7016 no later than 1 week in advance of the conference date.

JOHNNY J. BUTLER,
Secretary

[Pa.B. Doc. No. 02-1748. Filed for public inspection October 4, 2002, 9:00 a.m.]

[Correction]

Pennsylvania Conservation Corps; Grants for Projects

An error occurred in a Department of Labor and Industry notice published at 32 Pa.B. 4780, 4781 (September 28, 2002). The Pennsylvania Conservation Corps' e-mail address was printed incorrectly. The correct e-mail address is pcc@state.pa.us.

[Pa.B. Doc. No. 02-1697. Filed for public inspection September 27, 2002, 9:00 a.m.]

ENVIRONMENTAL HEARING BOARD

EME Homer City Generation L.P. v. DEP; EHB Doc. No. 2002-058-L

The Department of Environmental Protection (Department) and EME Homer City Generation L.P. (EME) have agreed to a settlement of the previous matter. The Department issued NPDES Permit No. PA0043648 (Permit) to EME on January 29, 2002, which authorized EME to discharge wastewater from its coal cleaning plant in Center Township, Indiana County. The Permit included conditions that, inter alia, imposed preliminary water quality-based effluent limitations for selenium and sulfates and required EME to conduct a Toxics Reduction Evaluation (TRE) and 3 month study of total dissolved solids (TDS) and osmotic pressure. EME appealed the issuance of the Permit on March 1, 2002.

The Department and EME have agreed to settlement of the appeal. Under the terms of the settlement, the Department will modify the Permit to delete the requirement to conduct a study of osmotic pressure and TDS, delete the TRE condition, add a new condition which includes elimination of any discharge from Outfall 001, except under emergency overflow conditions, change the description of Outfall 001 and revise the periods during which the interim and final effluent limitations for Outfall 001 will be in effect. The Department agrees that EME has satisfied its obligation to perform a Phase I TRE by notifying the Department that it will pursue source reduction at Outfall 001. EME agrees to accept the water quality-based effluent limitations for selenium and sulfates as final. The Department also agrees, upon request of EME, to modify the final water quality-based effluent limitation for sulfates in the discharge from Outfall 001 when the Environmental Quality Board adopts amendments to 25 Pa. Code § 96.3 (relating to water quality protection requirements).

Copies of the full agreement are held by Zelda Curtiss, Southwest Region, Office of Chief Counsel, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4262; and Maxine M. Woelfling, Morgan, Lewis & Bockius LLP, One Commerce Square, 417 Walnut Street, Harrisburg, PA 17101-1904, (717) 237-4000. A copy of the agreement has also been filed with the Environmental Hearing Board and may be reviewed during normal business hours upon request.

GEORGE J. MILLER,
Chairperson

[Pa.B. Doc. No. 02-1749. Filed for public inspection October 4, 2002, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

Cancellation of October and November Meetings

The October 15 and November 19, 2002, Environmental Quality Board (Board) meetings have been canceled. The next meeting of the Board is scheduled for Tuesday, December 17, 2002, at 9 a.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

DAVID E. HESS,
Chairperson

[Pa.B. Doc. No. 02-1750. Filed for public inspection October 4, 2002, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations on the dates indicated. To obtain the date and time of the meeting at which the Commission will consider these regulations, contact the Commission at (717) 783-5417 or visit its website at www.irrc.state.pa.us. To obtain a copy of the regulation, contact the promulgating agency.

<i>Final-Form Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
7B-3	Department of Conservation and Natural Resources State Parks; General Provisions	09/20/02
12-61	Department of Labor and Industry Special Rules of Administrative Practice and Procedure Before the Workers' Compensation Appeal Board and the Workers' Compensation Judges	09/24/02

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 02-1751. Filed for public inspection October 4, 2002, 9:00 a.m.]

INSURANCE DEPARTMENT

Alleged Violation of Insurance Laws; Michael L. Kempiski; Doc. No. SC02-09-015

Notice is hereby given of the Order to Show Cause issued on September 20, 2002, by the Deputy Insurance Commissioner in the previously referenced matter. Violation of the following is alleged: sections 604 and 639 of the Insurance Department Act of 1921 (40 P. S. §§ 234 and 279, and section 5(a)(2) of the Unfair Insurance Practices Act (40 P. S. § 1171.5).

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 Administrative Agency Law); 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure); 31 Pa. Code Chapter 56 (relating to special rules of administrative practice and procedure) 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 Hearings Administrator, Insurance Department, Administrative Hearings Office, 901 North 7th Street, Harrisburg, PA 17102.

Persons with a disability who wish to attend the previously referenced administrative hearing, and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency ADA Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1752. Filed for public inspection October 4, 2002, 9:00 a.m.]

Hartford Insurance Company of the Midwest; Private Passenger Auto Insurance Rate Revision

On September 17, 2002, the Insurance Department received from Hartford Insurance Company of the Midwest a filing for a proposed rate level change for private passenger auto insurance.

The company requests an overall 7.2% increase amounting to \$3.554 million annually, to be effective December 3, 2002.

Unless formal administrative action is taken prior to November 16, 2002, the subject filing may be deemed approved by operation of law.

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@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1753. Filed for public inspection October 4, 2002, 9:00 a.m.]

Life Investors Insurance Company of America; Rate Filing

Life Investors Insurance Company is requesting approval to increase the premium 35.0% for the long term care policy forms GCPLUS 1290 (PA), GCPLUS 2 1290 (PA), GCPRO (PA) 193, GCPRO (PA) 995, GCPRO-II (PA) 794, GCPRO-II (PA) 995 and the associated riders. A second increase of 25.0% is requested effective 2 years after the first rate increase. These forms were originally

issued by the Bankers United Life Assurance Company. The increases will affect 114 Pennsylvania policyholders.

The average premium would increase from \$1,306 to \$1,763 after the initial rate increase and to \$2,204 after the subsequent increase for GCPLUS 1290 (PA) and GCPLUS 2 1290 (PA). The average premium will increase from \$1,146 to \$1,547 after the initial rate increase and to \$1,934 after the subsequent increase for GCPRO (PA) 193 and GCPRO (PA) 995. The average premium will increase from \$1,167 to \$1,575 after the initial rate increase and to \$1,969 after the subsequent increase for GCPRO-II (PA) 794 and GCPRO-II (PA) 995.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional office in Harrisburg, PA.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Accident and Health Bureau, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1754. Filed for public inspection October 4, 2002, 9:00 a.m.]

**Daniel J. Reardon, The Wyomissing Group, Ltd.
and S.E.C.U.R.E. Insurance Company, Ltd.;
Prehearing**

Order to Show Cause; Doc. No. SC02-08-007

A prehearing telephone conference initiated by this office is scheduled for October 31, 2002, at 1 p.m. A date for a hearing shall be determined, if necessary, at the prehearing telephone conference.

If an attorney or representative for a party attending the conference does not have complete settlement authority relative to this matter, the party or persons with full settlement authority shall be available by telephone during the conference.

At the prehearing conference/telephone conference, the parties shall be prepared to discuss settlement, stipulations, witnesses and the documents anticipated for use at the hearing, estimated time for the hearing, special evidentiary or legal issues and other matters relevant to the orderly, efficient and just resolution of this matter.

No prehearing memoranda or other written submissions are required for the prehearing/settlement conference; however, the parties are encouraged to discuss settlement and possible stipulations pending the conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before October 17, 2002, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answers to petitions to intervene, if any, shall be filed on or before October 24, 2002.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1755. Filed for public inspection October 4, 2002, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insured has requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68), in connection with the termination of the insured's automobile policy. The hearing 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). The administrative hearing will be held in the Insurance Department's regional office in Philadelphia, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Philadelphia Regional Office, Room 1701 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of David Lourenco; file no. 02-265-04295; Flagship City Insurance Company; doc. no. PH02-09-008; October 17, 2002, at 1:30 p.m.

Parties may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend the previously referenced administrative hearing and require

an auxiliary aid, service or other accommodation to participate in the hearing, should contact Tracey Pontius, Agency Coordinator at (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1756. Filed for public inspection October 4, 2002, 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 insureds' policies. The administrative hearings will be held in the Insurance Department's regional offices in Philadelphia, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Philadelphia Regional Office, Room 1701 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of James and Diane Knowles; file no. 02-265-04176; American International Insurance Company; doc. no. PH02-09-007; October 30, 2002, at 9 a.m.

Appeal of James G. Cardinal; file no. 02-280-04312; Nationwide Mutual Fire Insurance Company; doc. no. PH02-09-006; October 30, 2002, at 11 a.m.

Appeal of Michael and Mimi Potoka; file no. 02-267-04269; Nationwide Mutual Fire Insurance; doc. no. PH02-09-009; October 30, 2002, at 1 p.m.

Each party may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1757. Filed for public inspection October 4, 2002, 9:00 a.m.]

Lloyd Shelton; Prehearing

License Denial; Doc. No. AG02-09-005

A prehearing telephone conference initiated by this office is scheduled for October 24, 2002, at 1:30 p.m. Each party shall provide the Hearings Administrator a telephone number to be used for the telephone conference on or before October 10, 2002. A date for a hearing shall be determined, if necessary, at the prehearing telephone conference. If an attorney or a representative for a party attending the conference does not have complete settlement authority relative to this matter, the party or persons with full settlement authority shall be available by telephone during the conference.

At the prehearing telephone conference, the parties shall be prepared to discuss settlement, stipulations, witnesses and the documents anticipated for use at the hearing, estimated time for the hearing, special evidentiary or legal issues and other matters relevant to the orderly, efficient and just resolution of this matter.

No prehearing memoranda or other written submissions are required for the prehearing telephone/settlement conference; however, the parties are encouraged to discuss settlement and possible stipulations pending the conference.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1758. Filed for public inspection October 4, 2002, 9:00 a.m.]

Standard Fire Insurance Company and Phoenix Insurance Company; Private Passenger Auto Insurance Rate and Rule Revisions

On September 23, 2002, the Insurance Department (Department) received from Standard Fire Insurance Company and Phoenix Insurance Company a filing for a proposed rate level and rule change for private passenger auto insurance.

Standard Fire Insurance Company requests an overall 3.6% increase amounting to \$1.697 million annually, to be effective December 26, 2002.

Phoenix Insurance Company requests an overall 4.1% increase amounting to \$1.936 million annually, to be effective December 26, 2002.

Unless formal administrative action is taken prior to November 22, 2002, 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 Department's regional offices in Harrisburg, Philadelphia, Pittsburgh and Erie, PA.

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@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1759. Filed for public inspection October 4, 2002, 9:00 a.m.]

Gary Stephen Woodring; Prehearing

Order to Show Cause; Doc. No. SC02-08-023

A prehearing conference is scheduled for November 13, 2002, at 10 a.m. in Room 200, Administrative Hearings Office, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102. A hearing is scheduled for December 10, 2002, at 10 a.m. in Room 200, Administrative Hearings Office, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102.

If an attorney or representative for a party attending the conference does not have complete authority relative to this matter, the party or person with full settlement authority shall be available by telephone during the conference.

At the prehearing conference/telephone conference, the parties shall be prepared to discuss settlement, stipulations, witnesses and the documents anticipated for use at the hearing, estimated time for the hearing, special evidentiary or legal issues and other matters relevant to the orderly, efficient and just resolution of this matter. Pending hearing, parties shall exchange proposed exhibits and the names of witnesses, provide an offer of proof with respect to each witness and informally attempt to resolve undisputed facts by stipulation.

On or before October 30, 2002, each party shall file with the Administrative Hearings Office a prehearing statement which shall contain: (1) a comprehensive statement of undisputed facts to be stipulated between the parties; (2) a statement of additional contended facts; (3) names and address of witnesses along with the specialties of experts to be called; (4) a list of documents to be used at the hearing; (5) special evidentiary or other legal issues; and (6) the estimated time for that party's case. Along with service of the prehearing statement on the opposing party, each party shall supply the other with a copy of all listed documents and any report generated by an expert witness designated on the prehearing statement. Any report subsequently received from a party's expert witness prior to hearing shall be supplied to the other party within 2 business days. Copies of documents and expert reports need not be filed with the Administrative Hearings Office.

On or before November 9, 2002, each party shall file with the Administrative Hearings Office a list of specific objections, if any, to the documents supplied with the other party's prehearing statement. Objections not raised shall be deemed waived at hearing. Except as established at the prehearing conference, both parties shall appear at the scheduled hearing prepared to offer all relevant testimony or other 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 for photographs into evidence shall bring enough copies for the record and for each opposing party.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any,

must be filed on or before November 26, 2002, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answers to petitions to intervene, if any, shall be filed on or before December 3, 2002.

Persons with a disability who wish to attend the previously referenced administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Tracey Pontius, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1760. Filed for public inspection October 4, 2002, 9:00 a.m.]

UPMC; Demographic Rating Methodology; Rate Filing

On September 12, 2002, UPMC submitted to the Insurance Department (Department) a Demographic Rating Methodology Filing (filing no. A63467001, 2-DEM2002-UPMCHP) for all new and renewing groups with 50 or fewer employees in the health plan commencing December 1, 2002. The proposed demographic rating classes are age, gender and rating tier. This filing revises, and will be used in conjunction with, the currently approved CRC methodology.

This filing is available for public inspection during normal working hours at the Department's regional offices in Harrisburg and Pittsburgh, PA.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Actuary, Insurance Department, Bureau of Accident and Health Insurance, Office of Rate and Policy Regulation, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1761. Filed for public inspection October 4, 2002, 9:00 a.m.]

United Services Automobile Association; Homeowners Rate/Rule Revisions

On September 20, 2002, the Insurance Department (Department) received from United Services Automobile Association a filing for a rate level change for homeowners insurance.

The company requests an overall 4.0% increase amounting to \$853,000 annually, to be effective February 1, 2003.

Unless formal administrative action is taken prior to November 19, 2002, 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 Department's regional offices in Harrisburg, Philadelphia, Pittsburgh and Erie, PA.

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 mburkett@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 02-1762. Filed for public inspection October 4, 2002, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The following Liquor Control Board leases will expire:

Allegheny County, Wine & Spirits Shoppe #9211, Village Square Mall, Suite 100, 5000 Oxford Drive, Bethel Park, PA 15102.

Lease Expiration Date: November 30, 2006

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 12,000 net useable square feet of new or existing retail commercial space in a shopping center environment with free parking and convenient loading in the South Hills area near the intersection of Washington (Route 19) and Fort Couch Roads.

Proposals due: October 25, 2002, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408 300 Liberty Avenue, Pittsburgh, PA 15222
Contact: George Danis, (412) 565-5130

Northampton County, Wine & Spirits Shoppe #4801, Walnutport Shopping Center, 200 Southbest Avenue, Walnutport, PA 18088.

Lease Expiration Date: January 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 3,826 net useable square feet of new or existing retail commercial space on South Best Avenue (Route 145) within 1/4 mile of the intersection of Main Street (Route 873), Walnutport Borough.

Proposals due: October 25, 2002, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Willard J. Rhodes, (717) 657-4228

Philadelphia County, Wine & Spirits Shoppe #5140, 3000 Richmond Street, Philadelphia, PA 19134-5807.

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,500 net useable square feet of new or existing retail commercial space between Aramingo Avenue and Lehigh Avenue in Philadelphia.

Proposals due: October 25, 2002, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, 8305 Ridge Avenue Philadelphia, PA 19128-2113
Contact: Robert Jolly, (215) 482-9671

JOHN E. JONES, III,
Chairperson

[Pa.B. Doc. No. 02-1763. Filed for public inspection October 4, 2002, 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 (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 October 28, 2002, as set forth at 52 Pa. Code § 3.381 (relating to the applications for transportation of property, household goods in use and persons). The protest should also indicate whether it applies to the temporary authority application or the permanent application or both.

Application of the following for approval to *begin* operating as *common carriers* for transportation of *persons* as described under the application.

A-00119048. Acty T. Rindt t/d/b/a Excel Limousine (3844 Beatty Court, Murrysville, Westmoreland County, PA 15668)—persons in limousine service, between points in Allegheny County. *Attorney:* John A. Pillar, 680 Washington Road, Suite B101, Pittsburgh, PA 15228.

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-00109393, Folder 2, Am-A. W. Dale Rosewell t/d/b/a Rosewell Limousine Service (2800 Franklynn Drive, Allison Park, Allegheny County, PA 15101)—persons in limousine service, between points in Pennsylvania: *So as to Permit* the transportation of persons in limousine service, between points in Allegheny County. *Attorney:* John A. Pillar, 680 Washington Road, Suite B-101, Pittsburgh, PA 15228.

A-00117167, Folder 1, Am-A. Brian Homerosky and Kevin R. Prescott, Copartners t/d/b/a Southpointe Limousine (211 N. Haft Street, Houston, Washington County, PA 15342)—persons in limousine service, between points in Pennsylvania: *So as to Permit* the transportation of persons in limousine service, between points in Allegheny County.

A-00117557, Folder 1, Am-A. Lawrence A. Waite t/d/b/a Airport Sedan Service (1107 Winterton Street, Pittsburgh, Allegheny County, PA 15206)—persons in limousine service, between points in Pennsylvania: *So as*

to *Permit* the transportation of persons in limousine service, between points in Allegheny County.

A-00116477, Folder 1, Am-A. Angel Limousine Service, Inc. (128 Ridgewood Avenue, Pittsburgh, Allegheny County, PA 15229), a corporation of the Commonwealth—persons in limousine service, between points in Pennsylvania: *So as to Permit* the transportation of persons in limousine service, between points in Allegheny County.

A-00116617, Folder 2, Am-A. Joseph A. Trapuzzano t/d/b/a Broadway Limousine (868 Beaver Grade Road, Moon Township, Allegheny County, PA 15108)—persons in limousine service, between points in Pennsylvania: *So as to Permit* the transportation of persons in limousine service, between points in Allegheny County. *Attorney:* David M. O'Boyle, 1450 Two Chatham Center, Pittsburgh, PA 15219-3427.

Application 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 the application.

A-00109941, Folder 2. Keith Hrynda and Lisa Goeller, Copartners t/d/b/a Beverly Hills Limousine Service (3218 Perrysville Avenue, Pittsburgh, Allegheny County, PA 15214)—persons in limousine service, between points in the Counties of Allegheny, Westmoreland and Washington.

Application of the following for the approval of the transfer of stock as described under the application.

A-00115589, F. 5000. Concord Coach USA, Inc. (2752 Mt. Carmel Avenue, Glenside, Montgomery County, PA 19038), a corporation of the Commonwealth, for the approval of the transfer of 50 shares of issued and outstanding shares held by Inna Primak to Roman Barkan (20 shares) and to Alexander Kagan (30 shares). *Attorney:* John J. Gallagher, Suite 1100, 1760 Market Street, Philadelphia, PA 19103.

Application of the following for certificate of public convenience approving the operation of motor vehicles as common carriers for the transportation of household goods as described under the application.

A-009270. James and Debra Ament, Tenants by Entirety (314 North Main Street, Coopersburg, Lehigh County, PA 18036)—household goods in use, between points in the Counties of Lehigh, Northampton and Bucks, and from points in said Counties, to points in Pennsylvania, and vice versa.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-1764. Filed for public inspection October 4, 2002, 9:00 a.m.]

Water Service Without Hearing

A-212285F0108. Pennsylvania-American Water Company. Application of Pennsylvania-American Water Company for approval of the right to offer, render, furnish or supply water service to the public in portions of Paint, Knox and Farmington Townships, Clarion 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 October 21, 2002, under 52 Pa. Code (relating to public utilities).

Applicant: Pennsylvania-American Water Company

Through and By Counsel: Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, 800 West Hersheypark Drive, P. O. Box 888, Hershey, PA 17033-0888.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-1765. Filed for public inspection October 4, 2002, 9:00 a.m.]

Water Service Without Hearing

A-210104F0023 and A-210075F2000. Pennsylvania Suburban Water Company and Eagle Rock Utility Corporation. Application of Pennsylvania Suburban Water Company and Eagle Rock Utility Corporation for approval of: (1) the acquisition by Pennsylvania Suburban Water of the water system assets of Eagle Rock Utility Corporation; (2) the right of Pennsylvania Suburban Water to begin to offer, render, furnish or supply water service to the public in portions of East Union Township, Schuylkill County, PA; and (3) the abandonment by Eagle Rock Utility Corporation of public water service within East Union Township, Schuylkill 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 October 21, 2002, under 52 Pa. Code (relating to public utilities).

Applicant: Pennsylvania Suburban Water Company

Through and By Counsel: Mark J. Kropilak, Esquire, Vice President and General Counsel, 762 West Lancaster Avenue, Bryn Mawr, PA 19010; and R. Jeffrey Schmidt, Esquire, 1031 Valley of the Lakes, Hazelton, PA 18201.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 02-1766. Filed for public inspection October 4, 2002, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The 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.


Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:
 The payment date specified in the contract.
 30 days after the later of the receipt of a proper invoice or receipt of goods or services.
 The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center
 PA Department of Community and Economic Development
 374 Forum Building
 Harrisburg, PA 17120
 800-280-3801 or (717) 783-5700

Reader's Guide



Legal Services & Consultation

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

⑤ Location

⑥ Duration

⑦ (For Commodities: Contact:) Vendor Services Section
 717-787-2199 or 717-787-4705

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



Commodities

4149 Baffles Purchase of approx. 500 ea. aluminum baffles constructed of 5052 aluminum, .063" thickness, each measuring 96" x 26". All pieces to be punched and formed as per diagrams contained in bid package. Also purchase of approx. 90 pieces of 6061-T6 aluminum round rod, 3/8", 12' long.

Department: Fish and Boat Commission
Location: PA Fish & Boat Commission, Tylersville Fish Culture Station, 43 Hatchery Lane, Loganton, PA 17747
Duration: For delivery approx. November 1, 2002
Contact: Kathi Tibbott, Purchasing Agent, (814) 359-5130

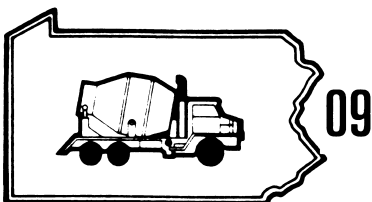
201204-Revised Note: Revised; please disregard previous advertisement. Responses to original advertisement need not re-submit. Commodities: Epoxy two-part paint, epoxy two-part rust inhibitor, and compatible reducer. These products will be used on steel and galvanized metal surfaces. Fax your request to Sharon Baughman at (814) 486-1889 or e-mail to shbaughman@state.pa.us; include company name, address, phone number, fax number, and name of contact person.

Department: Transportation
Location: Cameron Regional Repair Facility, Emporium, PA 15834
Duration: Approximately one (1) year
Contact: Sharon Baughman, (814) 486-3727

SU-02-08 SU-02-08: Torr International Reactive Ion Etcher, Model RIE300W-CS. Product must meet or exceed the specifications listed in the solicitation package. NOTE: Power Supply must be compatible with Torr International CRC-150 Sputtering System. Request for bid package may be faxed to 717-477-1350, Shippensburg University.

Department: State System of Higher Education
Duration: System to be furnished November 2002.
Contact: Mona M. Holtry, (717) 477-1386

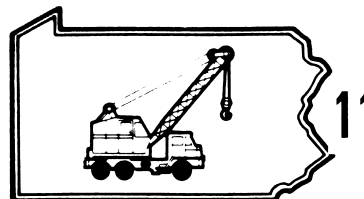
SERVICES



Construction & Construction Maintenance

KUCC-0051 Kutztown University is seeking qualified contractors for the work associated with the Installation of Bleachers in the Keystone Hall Arena at Kutztown University. The contractor must be able to engineer, fabricate and install one wall attached telescoping stand on the east side balcony level of Keystone Hall Main Arena. Bid packages are available for a non refundable fee of \$20.00 from: Virginia Stoudt, STV Architects, 205 West Welsh Drive, Douglassville, PA 19508, Phone: (610) 385-8325. Bid packages are available September 30, 2002 through Pre-Bid. A pre-bid meeting has been scheduled for October 9, 2002 at 9:00AM in Room OM-26, Old Main Building. All questions are due by the close of business on October 10, 2002. Bids are to be received no later than 2:00 PM in Room 229, Office of Planning and Construction. Bids will be opened on October 18, 2002 at 2:00 PM in Room 229, Office of Planning and Construction. Nondiscrimination and Equal Opportunity are the policies of the Commonwealth and the State System of Higher Education.

Department: State System of Higher Education
Location: Kutztown University, Kutztown, PA
Duration: Work to be complete on or before April 4, 2003
Contact: Barbara Barish, (610) 683-4602



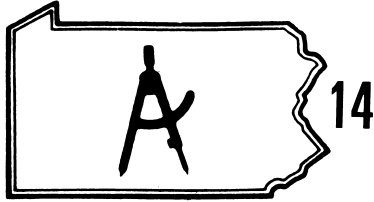
Demolition—Structural Only

02E420 Sealed Bid For Demolition and Removal. Forty-Four (44) Advertising Signs - Bidders must be on PennDot's contractors prequalified list as prime approved for building demolition. Work code class "B" Bids will be received until 1 P.M. on October 18, 2002.

Department: Transportation
Location: Derry Township/Mifflin County and Fermanagh Township/Juniata County (Narrows)
Contact: Yvonne S. Parker, Real Estate Specialist, (814) 765-0565

FM 20777016 Demolition of Transportation Storage Building #22. Floor area approximately 6,840 sq. ft. Stone foundation, wood frame construction. Please send a fax to 570-587-7108 with your company name, address, telephone and fax numbers and Federal ID number to request a bid package. Bid packages cannot be faxed.

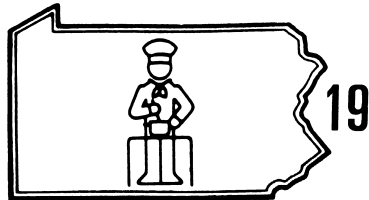
Department: Public Welfare
Location: Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505
Duration: Nov. 1, 2002 - June 30, 2003
Contact: Stanley Rygelski, PA, (570) 587-7291



Engineering Services

PennDOT-ECMS The Pennsylvania Department of Transportation has established a website advertising for the retention of engineering firms. You can view these business opportunities by going to the Department of Transportation's Engineering and Construction Management System at www.dot2.state.pa.us.

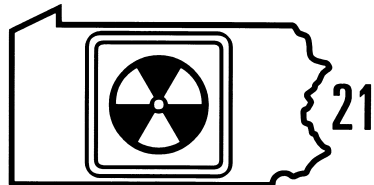
Department: Transportation
Location: Various
Contact: www.dot2.state.pa.us



Food

696 Bread and Bread Products.

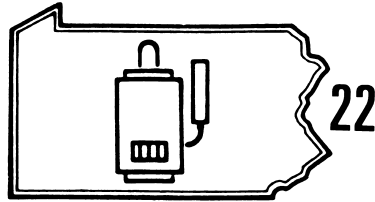
Department: Public Welfare
Location: Polk Center, P.O. Box 94, Polk, PA 16342
Duration: January 1, 2003, thru June 30, 2003
Contact: Patty Frank, Purchasing Agent, (814) 432-0229



Hazardous Material Services

SP-3522000014 Removal and disposal underground storage tank system; and restore paved parking area.

Department: Environmental Protection
Location: 110/112 East Broad Street, Beaver Meadows
Duration: 11/18/02 - 12/31/02
Contact: Dorothy A. Fuller, (570) 826-2202



HVAC Services

LBLA 291C Provide Automatic Transfer Switch. To be Russelectric model or approved equal.

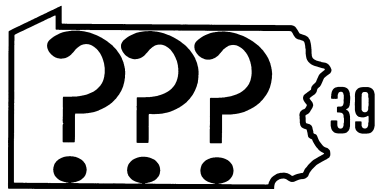
Department: Public Welfare
Location: North Central Secure Treatment Unit, Green Building, 210 Clinic Road, Danville, PA. Located on the grounds of the Danville State Hospital.
Contact: Dee Kuhn, Purchasing Agent, (717) 789-5509



Laboratory Services

SP3526000 The work consists of providing benthic invertebrate analysis of benthic samples collected from French Creek. Services shall include all manpower, equipment, and other expenses required to perform sorting, identification, and enumeration of all benthic organisms in the collected samples. QA/QC analysis also required.

Department: Environmental Protection
Location: Samples collected from French Creek. Erie, Crawford, and Venango Counties, Pennsylvania
Duration: December 1, 2002, to June 30, 2003
Contact: Doug Higby, (814) 332-6816



Miscellaneous

SP3520028248 Provide Express Plus Support for Remedy Help Desk Software.

Department: Environmental Protection
Location: Harrisburg, PA
Duration: 1 year from execution with 4 renewal options.
Contact: Ally Hubler, (717) 772-5747

20872007 Vendor shall supply large dumpster/container for renovation/construction projects and disposal of waste.

Department: Public Welfare
Location: Danville State Hospital, 200 State Hospital Drive, Danville, PA 17821
Duration: Anticipated to begin January 1, 2003 - December 31, 2004
Contact: Doris Cavallini, (570) 271-4579

[Pa.B. Doc. No. 02-1767. Filed for public inspection October 4, 2002, 9:00 a.m.]

DESCRIPTION OF LEGEND

- | | |
|--|---|
| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
|--|---|

KELLY LOGAN,
Secretary

Contract Awards

The following awards have been made by the Department of General Services, Bureau of Purchases:

Requisition or Contract No.	PR Award Date or Contract Effective Date	To	In the Amount Of
2550-02 rip#1	09/19/02	Freightliner of Harrisburg	\$70,000.00
2550-02 rip#1	09/19/02	Groff Tractor/Equipment	70,000.00
2550-02 rip#1	09/19/02	Penn Detroit Diesel Allison	35,000.00
5610-37 rip#1	09/19/02	Eastern Industries	88,029.92
5610-37 rip#1	09/19/02	Eastern-West Naginey	11,745.00
5610-37 rip#1	09/19/02	HRI	66,344.65
5850-01 sup#9	09/24/02	Amrel Systems	10,000.00
5850-01 sup#9	09/24/02	Anixter	20,000.00
5850-01 sup#9	09/24/02	Eplus Technology	10,000.00
5850-01 sup#9	09/24/02	Intellimark	10,000.00
5850-01 sup#9	09/24/02	Oki Data Americas	10,000.00
5850-01 sup#9	09/24/02	Scan-Optics	10,000.00
5850-01 sup#9	09/24/02	Vbrick Systems	10,000.00
6350-01 sup#6	09/20/02	Intertech Security LLC	100,000.00
6350-01 sup#6	09/20/02	Security Systems of America	50,000.00

Requisition or Contract No.	PR Award Date or Contract Effective Date	To	In the Amount Of
6810-01	10/01/02	Calcium Chloride Sales	476,440.00
6810-01	10/01/02	Tetra Technologies	578,400.00
8520-01 sup#3	09/24/02	Ansell Healthcare Products	206.50
8520-01 sup#3	09/24/02	SSL Americas/Durex	84.50
8520-01 sup#3	09/24/02	Access Group	1,754.61
8520-01 sup#3	09/24/02	Female Health Co.	1,100.00
9985-21 sup#1	09/18/02	Deaf & Hard of Hearing Services	30,000.00
9985-21 sup#1	09/18/02	May J. Rupert	30,000.00
9985-21 sup#1	09/18/02	Pamela Cosper	30,000.00
9985-21 sup#1	09/18/02	Ruth Ann Schornstein	30,000.00
9985-21 sup#1	09/18/02	William Waters	30,000.00
1075112-01	09/20/02	XpedX of Harrisburg KELLY POWELL LOGAN, <i>Secretary</i>	24,838.00

[Pa.B. Doc. No. 02-1768. Filed for public inspection October 4, 2002, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 2600 AND 2620]

Personal Care Homes

Statutory Authority

The Department of Public Welfare (Department), under the authority of section 211 and Articles IX and X of the Public Welfare Code (62 P.S. §§ 211, 901—922 and 1001—1087) proposes to adopt amendments to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking will add a new Chapter 2600 (relating to personal care homes) to replace the existing personal care home licensing regulations in Chapter 2620 (relating to personal care home licensing). Personal care homes are a vital and important component of the continuum of community-based residential long-term care services available to the residents of this Commonwealth. This proposed rulemaking will strengthen health and safety requirements based on public input and research.

Background

The development of this proposed rulemaking began in Fall 1999 as part of the Adult Residential Regulations Project (project), a Privatize, Retain, Innovate, Modify and Eliminate (PRIME) initiative to improve existing human service licensing functions within State government by strengthening health and safety protections and reducing duplication within the licensing process. PRIME is the Commonwealth's initiative to make State government more customer-centered, cost-efficient and competitive.

The Department's Office of Licensing and Regulatory Management leads the project. The project will encompass nine chapters under the authorities of the Department and the Department of Health. The goal of the regulatory consolidation is to improve services and protections to consumers by focusing provider effort on compliance with fundamental health and safety regulations. To allow for dialogue and to obtain specific feedback from those most directly affected by this project, the Department solicited ongoing and active consultation and involvement with many providers, provider associations, residents, family members and advocacy organizations.

The Department convened initial briefing meetings with numerous Statewide external stakeholders organizations from Fall 1999 to Spring 2000. In February 2001, the Department convened a Statewide briefing meeting to present information regarding the scope and content of the project. The Department invited legislators, Statewide external stakeholders, educators, field licensing staff, providers, consumers and advocates to attend. The Department posted the first informal draft of the project regulations on the Department's website in April 2001, and mailed copies to interested persons without Internet access. In May 2001, the Department convened a 3-day meeting to obtain input on major issues of particular concern to all stakeholders. The Department also extended the comment period on the first informal draft of the regulations for an additional 2 weeks, to provide additional time for public input. The Department received

comments from over 950 interested individuals regarding the first informal draft of the proposed project regulations, with the majority of the comments from the personal care home industry.

In June 2001, after reviewing and considering the comments received, the Department and the Departments of Health and Aging decided to cluster and phase in the promulgation of the project regulations. The personal care home regulations were prioritized due to the tremendous growth in the personal care home population, and the changing nature and complexity of needs and services required by these residents. In June 2001, the Department mailed all providers a letter to inform them of this decision.

In preparation of this proposed rulemaking for personal care homes, the Department met with its Personal Care Home Advisory Committee and external stakeholder groups. Department staff also toured personal care homes across this Commonwealth to discuss the development of the proposed rulemaking with personal care home administrators, residents, family members and staff. The Department reviewed and considered all comments, and then developed a preview draft of the proposed personal care home rulemaking.

In March 2002, the Department posted the preview of the draft personal care home regulations on its website, and invited interested persons to provide comments. Comments received were reviewed and considered in developing this proposed rulemaking. The Department will continue to meet with personal care home stakeholders.

Throughout this public input process, the Department received many valuable comments and suggestions from many external stakeholders who participated in the process. The Department values the comments submitted and has incorporated many of the suggested changes in the proposed rulemaking.

Significant Provisions

Reportable Incidents

In § 2600.16 (relating to reportable incidents), the Department proposes enhanced reporting of incidents, beyond those listed in the current regulations, which will serve to protect the health, safety and rights of residents in the home.

Waivers

The proposed provisions in § 2600.19 (relating to waivers) are intended to ensure that waivers of regulatory standards do not have a negative impact on residents. The section is designed to ensure that residents are informed about waiver requests and approved waiver requests in the home in which they live. In addition, the residents are given an opportunity to provide input into the home's waiver request.

Resident-Home Contract

The proposed provisions in § 2600.26 (relating to resident-home contract: information on resident rights) are expanded to provide full disclosure of the contract to be signed and the resident rights. This requirement will promote good business practices, and protect the resident, the resident's family and the facility. The additional regulatory protections include a 72-hour right of rescission of the contract, a requirement that

resident's service needs are to be addressed 365 days a year, and a mandate to list the actual amount of allowable resident charges for each service item.

Resident Rights

The proposed provisions in § 2600.42 (relating to specific rights) offer additional regulatory protections for the resident, listing 28 specific resident rights. An appeal procedure is proposed in § 2600.41 (relating to notification of rights and complaint procedures) to allow the resident or the resident's family to file a complaint if they believe a resident's right has been violated.

Staffing

The proposed provisions in § 2600.56 (relating to staffing) maintain the current level of personal care service hours per resident, based on the resident's mobility or immobility needs. This section also proposes that if a resident's personal care needs exceed the current minimum level of personal care hours, the home shall provide a sufficient number of direct care staff to provide the necessary level of care required by the resident.

Administrator Training and Orientation

The Department proposes in § 2600.57 (relating to administrator training and orientation) to provide for greater training and competency requirements for administrators than current regulations require. Training requirements cover additional essential areas such as special populations with dementia, care of residents with mental illness and cognitive impairments and gerontology. Demonstrated competency in the training material is required. Enhanced training will provide additional health and safety protection of residents by ensuring that administrators gain knowledge and competency through training. This section proposes to expand the scope and length of the administrator training program, and also requires new administrators to successfully complete a competency-based internship in a licensed home under a Department-trained administrator. A licensed nursing home administrator hired after the effective date of this rulemaking will be required to pass a competency-based training test, or attend a shortened administrator-training course and achieve a passing grade.

Staff Training and Orientation

Section 2600.58 (relating to staff training and orientation) proposes to mandate greater training and competency requirements for direct care staff. The Department proposes that annual training for all staff is 24 hours and must be related to their job duties. The health and safety of residents will be enhanced by ensuring that staff gain knowledge and competency through training.

Bedrooms

The Department proposes in § 2600.101 (relating to resident bedrooms) that residents with physical disabilities will have larger bedrooms to allow for easy passage and comfortable use of assistive devices.

Safe Management Techniques

A resident's health and safety is most at risk during a time of crisis behavior. The Department reviewed the literature and spoke with experts regarding this topic, and considered other regulations that are being applied to similar services. The positive intervention techniques proposed in § 2600.201 (relating to safe management techniques) applied by staff are designed to assist a resident to return to safe and stable functioning.

Initial Assessment and Annual Assessment

Section 2600.225 (relating to initial assessment and the annual assessment) proposes enhanced screening and

assessments of residents, to ensure accurate evaluation of resident needs and to prevent a resident from being inappropriately placed in a home. The proposed provisions require that the resident be comprehensively assessed within 72 hours of admission, to identify the resident's current needs, and to ensure that the facility can meet the resident's needs.

Development of the Support Plan

After the resident's needs are assessed, the Department proposes in § 2600.226 (relating to development of the support plan), the development of a support plan, which is a written document for each resident describing the resident's assessed care, service or treatment needs, and how those needs will be met and by whom. The support plan sets out clearly the care and responsibilities of the facility or outside entities in providing the services that the resident needs. In addition, the facility is required to inform the resident, the resident's family or advocate of the right to have other persons involved in the development of the support plan.

Secured Unit Requirements

Section 2600.231—2600.241 (relating to secured unit requirements) proposes that a home that chooses to operate a secured unit for persons with dementia may open this unit without submitting a waiver for the Department's review and approval. To operate a secured unit, a facility shall comply with all regulations relating to secured units set forth in this sections.

Medications Administration

The Department received numerous comments on previous drafts of proposed §§ 2600.181—2600.188 (relating to medications), concerning who may directly administer medications to residents. Currently, homes are only permitted to provide assistance with medications prescribed for self-administration. Current provisions require that only a licensed physician, nurse or dentist, as appropriate, may administer medications not prescribed for self-administration. The current provisions are retained in the proposed rulemaking. The Department received recommendations to expand the types of persons allowed to directly administer medications not prescribed for self-administration to include trained personal care home staff. As part of this recommendation, commentators recommended creating a specific medical technician training and certification program for personal care home staff. Because of State practice law and regulations, the issue of expanding persons able to directly administer medications not prescribed for self-administration requires review in more detail with the General Assembly, the State Board of Medicine and the State Board of Nursing. The Department will review this recommendation independently from this rulemaking and, if feasible, consider a separate rulemaking in the future.

Affected Individuals, Groups and Organizations

Personal care homes shall comply with these requirements to operate. The Department's survey indicates that there are 1,786 licensed personal care homes in this Commonwealth, with a licensed capacity of approximately 80,000 beds. Of this total, approximately 1,400 homes are operated for profit, and almost 400 homes are operated as nonprofit. Of the over 53,000 residents in personal care homes, over 10,500 residents receive Supplemental Security Income (SSI) benefits which are accepted as full payment towards the residents' monthly care. There are approximately 370 homes with four to eight beds, approximately 370 homes with 9 to 20 beds, approximately 535 homes with 21 to 50 beds, over 300 homes with 50 to

100 beds and over 300 homes with over 100 beds. The residents receiving care and services in these licensed facilities are directly affected by this proposed rulemaking since they are the consumers that the proposed rulemaking aims to protect. Families of the residents receiving care and services are affected in their interest to assure the health, safety and well-being of their loved ones.

Accomplishments/Benefits

This proposed rulemaking offers standards to improve the operation of all personal care homes in this Commonwealth, such as enhanced consumer protections, strengthened training and competency requirements for administrators and direct care staff, safe management techniques, improved screening and assessments of residents to ensure that the home can meet resident needs, expanded incident reporting, and the development of a support plan to ensure the resident's needs will be met by the facility.

Private Sector

Personal Care Home Providers

In drafting the proposed rulemaking, the Department gave careful consideration to the effect the regulations will have on the cost of providing or receiving services. The issues that will have most potential to influence the cost of implementing Chapter 2600 are the following:

1. Mandatory costs for all personal care homes:

(a) Printing costs for policies and procedures, personnel management, quality management and other necessary documents.

(b) Reimbursement of residents' personal needs allowance within 1 week of discharge.

(c) Annual furnace inspection.

(d) Additional annual training costs due to additional required hours of training for administrators and staff.

2. Optional or possible costs for all personal care homes:

(a) A home with possible fire-safety violations will incur additional costs to correct the violations.

(b) Certification as a new personal care home administrator will require upgraded credentials, which may require additional salary. Training and competency-based testing.

(c) A facility with multiple buildings on the premises, that house four or more residents in each building, will need to meet new staffing requirements.

(d) Physical site modifications to serve residents with physical disabilities.

(e) Coliform water testing for homes not connected to a public water system.

3. Individual choice to assume cost:

(a) Those applying to be personal care home administrators for the first time must meet new educational requirements, obtain hands-on experience, and complete and pass competency based testing prior to becoming an administrator.

(b) Those applying to be personal care home administrators for the first time must meet increased certification hours (from 40 hours to 60 hours).

(c) Those applying to be personal care home administrators for the first time must pay cost associated with competency-based testing for new personal care home administrators.

General Public

There will be no costs to the general public as a result of this proposed rulemaking.

Public Sector

Commonwealth

The Department anticipates that this proposed rulemaking will have no impact on State revenues. Personal care home residents who meet eligibility requirements can use government funds to pay to live in a personal care home. Approximately 10,000 low-income residents over 65 years of age, disabled or blind receive monthly payments from the SSI Program. In addition, the Commonwealth provides a supplement to SSI recipients. This supplement was increased by 20% (or \$15 million in State dollars) for fiscal year 2001-2002.

Local Government

This proposed rulemaking will not impact local government.

Paperwork Requirements

The proposed rulemaking affects the paperwork requirements for the Commonwealth and the general public because additional paperwork is required. However, there is no reasonable alternative to the increased paperwork. Departmental forms required by the regulation, such as the intake assessment and the annual assessment forms, will be developed with input from external stakeholders prior to implementation.

Effective Date

This proposed rulemaking will become effective immediately upon publication of a final-form rulemaking except for § 2600.58(a)—(c), which will take effect 1 year after publication of final-form rulemaking.

Sunset Date

A sunset date is not anticipated because the underlying statute is permanent.

Public Hearings

Public hearings concerning the proposed rulemaking are not planned.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Office of Licensing and Regulatory Management, Teleta Nevius, Director, Room 316 Health and Welfare Building, P. O. Box 2675, Harrisburg, PA 17120, (717) 705-0383 within 30 days of the date of publication of this notice in the *Pennsylvania Bulletin*. Comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form rulemaking. Comments after the 30-day comment period will be considered for any subsequent revisions of this regulation.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 23, 2002, the Department submitted a copy of the proposed rulemaking to

the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Health and Human Services Committee and the Senate Public Health and Welfare Committee. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department 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 rulemaking, it will notify the Department within 10 days of the expiration of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the review of objections raised, prior to final publication of the regulation, by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-475. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART IV. ADULT SERVICES MANUAL

Subpart E. RESIDENTIAL AGENCIES/FACILITIES/SERVICES

CHAPTER 2600. PERSONAL CARE HOMES

Subchapter A. GENERAL ADMINISTRATIVE REQUIREMENTS

GENERAL PROVISIONS

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2600.23.	Personnel management.
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2600.27.	Quality management.
2600.28.	Supplemental Security Income (SSI) recipients.
2600.29.	Refunds.
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RESIDENT RIGHTS

2600.41.	Notification of rights and complaint procedures.
2600.42.	Specific rights.
2600.43.	Prohibition against deprivation of rights.

GENERAL PROVISIONS

§ 2600.1. Purpose.

The purpose of this chapter is to assure that personal care homes provide safe, humane, comfortable and supportive residential settings for dependent adults who

require assistance beyond basic necessities of food and shelter but who do not need hospitalization or skilled or intermediate nursing care. Residents who live in personal care homes meeting the standards in this chapter will receive the encouragement and assistance they need to develop and maintain maximum independence and self-determination.

§ 2600.2. Scope.

(a) This chapter applies to personal care homes as defined in this chapter, and contains the minimum requirements that shall be met to obtain a license to operate a personal care home.

(b) This chapter does not apply to commercial boarding homes or to facilities operated by a religious organization for the care of clergy or other persons in a religious profession.

§ 2600.3. Inspections and licenses or certificates of compliance.

(a) An authorized agent of the Department will conduct onsite inspections of personal care homes.

(b) A certificate of compliance will be issued to the legal entity by the Department if, after an investigation by an authorized agent of the Department, the requirements for a certificate of compliance are met.

(c) The personal care home shall post the current certificate of compliance in a public place in the personal care home.

§ 2600.4. Definitions.

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

ADL—Activities of daily living—The term includes bathing, dressing and undressing, grooming, eating, transferring in out of bed or chair, toileting, bladder management, bowel management and additional personal care activities such as nail care and hair care.

Abuse—One or more of the following acts:

(i) The infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain, or mental anguish.

(ii) The willful deprivation by a caretaker of goods or services which are necessary to maintain physical or mental health.

(iii) Sexual harassment, rape or abuse, as defined in the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.502), 6 Pa. Code Chapter 15 (relating to protective services for older adults) and 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

(iv) Exploitation by an act or a course of conduct, including misrepresentation or failure to obtain informed consent which results in monetary, personal or other benefit, gain or profit for the perpetrator, or monetary or personal loss to the resident.

(v) Neglect of the resident, which results in physical harm, pain or mental anguish.

(vi) Abandonment or desertion by a caretaker.

Adult—A person who is 18 years of age or older.

Ancillary staff—A person who provides services for the personal care home but does not provide the services provided by direct care staff.

Agent—A person authorized by the Department or other State agency to enter, visit inspect or conduct an investigation of a personal care home.

Appropriate assessment agency or agent—An organization serving the aged or disabled population, such as a county mental health/mental retardation agency, a drug and alcohol agency, an area agency on aging or another human service agency or an individual in an occupation maintaining contact with the aged and disabled, such as medicine, nursing or rehabilitative therapies.

CAM—Complementary and alternative medications—Practices, substances and ideas used to prevent or treat illness or promote health and well-being outside the realm of modern conventional medicine. Alternative medicine is used alone or instead of conventional medicine. Complementary medicine is used along with or in addition to conventional medicine.

Commercial boarding home—A type of residential living facility providing only food and shelter, or other services normally provided by a hotel, for payment, for persons who require no services beyond food, shelter and other services usually found in hotel or apartment rental.

Complaint—A written or verbal criticism, dispute, or objection presented by or on behalf of a resident regarding the care, operations or management policies of a personal care home.

Department—The Department of Public Welfare of the Commonwealth.

Designee—The person authorized to act in the absence or in capacity of another. The authorization shall be documented in the resident's records when it concerns a resident's designee, and documented in the personnel records when it concerns the administrator's designee.

Direct care staff—

(i) A person who assists residents with activities of daily living, provides services or is otherwise responsible for the health, safety and welfare of the residents.

(ii) The term includes full and part time employees, temporary employees and volunteers.

Emergency medical plan—A plan that ensures immediate and direct access to medical care and treatment for serious injury, or illness, or both.

Financial management—

(i) A personal care service provided whenever the administrator serves as representative payee (or as guardian or power of attorney assigned prior to December 21, 1988) for a resident, or when a resident receives assistance in budgeting and spending of the personal needs allowance.

(ii) The term does not include storing funds in a safe place as a convenience for a resident.

Fire safety expert—A member of a local fire department, fire protection engineer, Commonwealth-certified fire protection instructor, college instructor in fire science, county or Commonwealth fire school, volunteer trained and certified by a county or Commonwealth fire school or an insurance company loss control representative.

IADL—Instrumental activities of daily living—The term includes the following:

- (i) Doing laundry.
- (ii) Shopping.
- (iii) Using transportation.

(iv) Managing money.

(v) Using a telephone.

Immobile resident—

(i) An individual who is unable to move from one location to another, or has difficulty in understanding and carrying out instructions without the continual and full assistance of other persons, or is incapable of independently operating a device, such as a wheelchair, prosthesis, walker or cane to exit a building.

(ii) The term does not mean that an immobile resident is incapable of self-administering medications.

Legal entity—A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of a personal care home.

License—A certificate of compliance document issued by the Department permitting the operation of a personal care home, at a given location, for a specific period of time, for a specified capacity, according to appropriate Departmental program licensure or approval regulations.

Life care contract/guarantee—An agreement between the licensee and the resident that the licensee will provide care to the resident for the duration of the resident's life.

Long-term care nursing facility—A facility licensed by the Department of Health under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904) that provides skilled or intermediate nursing care or both levels of care to two or more patients, who are unrelated to the nursing home administrator, for a period exceeding 24 hours.

Long-term care ombudsman—An agent of the Department of Aging who investigates and seeks to resolve complaints made by or on behalf of older individuals who are consumers of long-term care services. These complaints may relate to action, inaction or decisions of providers of long-term care services, of public agencies, of social service agencies or their representatives, which may adversely affect the health, safety, welfare or rights of these consumers.

Manual restraint—Any physical means that restricts, immobilizes or reduces a resident's ability to move his arms, legs, head or other body parts freely except that prompting, escorting or guiding a resident to assist in the activities of daily living will not be construed as a manual restraint.

Mobile resident—

(i) A resident who is physically and mentally capable of vacating the personal care home on the resident's own power or with limited assistance in the case of an emergency, including the capability to ascend or descend stairs if present on the exit path. Limited physical assistance means assistance in getting to one's feet, into a wheelchair, walker or prosthetic device. Verbal assistance means giving instructions to assist the resident in vacating the personal care home.

(ii) The term includes a person who is able to effectively operate a device required for moving from one place to another, and able to understand and carry out instructions for vacating the personal care home.

Neglect—The failure to provide for oneself or the failure of a caretaker to provide goods or services essential to avoid a clear and serious threat to physical or mental health. An adult who does not consent to the provision of protective services will not be found to be neglected solely on the grounds of environmental factors which are beyond

the control of the adult or the caretaker, such as inadequate housing, furnishings, income, clothing or medical care.

OTC—Over the counter.

Personal care home or *home*—A premise in which food, shelter and personal assistance or supervision are provided for a period exceeding 24 hours, for four or more adults who are not relatives of the operator, who do not require the services in or of a licensed long-term care facility, but who do require assistance or supervision in matters such as dressing, bathing, diet, financial management, evacuation of a home in the event of an emergency or medication prescribed for self-administration.

Personal care home administrator or *administrator*—An individual who is charged with the general administration of a personal care home, whether or not the individual has an ownership interest in the personal care home, and whether or not functions and duties are shared with other individuals.

Personal care resident or *resident*—A person, unrelated to the licensee, who resides in a personal care home and who may require and receive personal care services but does not require the level of care provided by a hospital or long-term care facility.

Personal care services—Assistance or supervision in matters, such as dressing, bathing, diet, financial management, evacuation of a resident in the event of an emergency or medication prescribed for self-administration.

Premises—The grounds and buildings on the same grounds, in proximity, used for providing personal care services.

Referral agent—An agency or individual who arranges for or assists, or both, with placement of a resident into a personal care home.

Relative—A spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece or nephew.

Restraint—

(i) A chemical or mechanical device used to restrict the movement or normal function of an individual or a portion of the individual's body. Mechanical devices used to restrain include geriatric chairs; posey; chest, waist, wrist or ankle restraints; locked restraints; and locked doors to prevent egress.

(ii) The term does not include devices used to provide support for the achievement of functional body position or proper balance as long as the resident can easily remove the device.

(A) Chemical restraint is the use of drugs or chemicals for the specific and exclusive purpose of controlling acute or episodic aggressive behavior.

(B) Drugs administered on a regular basis, as prescribed by a physician for the purposes of treating the symptoms of mental, emotional or behavioral disorders and for assisting the resident in gaining self-control over impulses, are not to be considered chemical restraints.

SP—Support plan—A written document for each resident describing the resident's care, service or treatment needs, and when the care, service or treatment will be provided, and by whom.

State agency—Any executive agency or independent agency as defined in 2 Pa.C.S. § 101 (relating to definitions).

Volunteer—A person who, of his own free will, and without monetary compensation, provides services for residents in the personal care home.

(i) Volunteers who perform direct care services shall meet the minimum qualifications and training of staff persons.

(ii) Residents receiving personal care services who voluntarily perform tasks in the personal care home are not to be considered volunteers for the purpose of determining compliance with the staffing requirements of this chapter.

§ 2600.5. Access requirements.

(a) The Department has the right to enter, visit and inspect any personal care home licensed or requiring a license and shall have full and free access to the records of the personal care home and to the residents therein and full opportunity to interview, inspect or examine the residents.

(b) The administrator and staff shall provide, upon request, immediate access to the personal care home, the residents, and the residents' records to:

- (1) Agents of the Department or other State agencies.
- (2) Representatives of the Department of Aging's Older Adults Protective Services Program.
- (3) The Long-Term Ombudsman Program.

(c) The administrator shall permit a resident's relatives, community service organizations and representatives of community legal services programs to have access to the personal care home during the personal care home's visitation hours or by appointment for the purpose of visiting, assisting or informing the residents of the availability of services and assistance.

GENERAL REQUIREMENTS

§ 2600.11. Procedural requirements for licensure or approval of personal care homes.

(a) Except for §§ 20.31 and 20.32 (relating to annual inspection; and announced inspections), the requirements in Chapter 20 (relating to licensure or approval of facilities and agencies) apply to personal care homes.

(b) Personal care homes shall be inspected as often as required by section 211(l) of the Public Welfare Code (62 P. S. § 211(l)), and more often as necessary. After initial approval, homes need not be visited or inspected annually except that the Department will schedule inspections in accordance with a plan that provides for the coverage of at least 75% of the licensed personal care homes every 2 years and all homes shall be inspected at least once every 3 years.

§ 2600.12. Appeals.

Appeals related to the licensure or approval of the personal care home shall be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 2600.13. Maximum capacity.

(a) The licensed capacity is the total number of residents who are permitted to reside in the personal care section of the personal care home at any time. A request to increase the capacity shall be submitted to the Department and other applicable authorities and approved prior to the admission of additional residents. The licensed capacity is limited by physical plant space, zoning and other applicable statutes and regulations.

(b) The maximum capacity specified on the license or certificate of compliance may not be exceeded.

§ 2600.14. Fire safety approval.

(a) Except in the cities of Scranton, Pittsburgh and Philadelphia, a personal care home shall have written fire safety approval prior to issuance of a certificate of compliance. Written fire safety approval shall be from either the Department of Labor and Industry or the Department of Health. In the cities of Scranton, Pittsburgh and Philadelphia, a personal care home shall have written fire safety approval prior to issuance of a certificate of compliance from the appropriate department of public safety. When fire safety approval is not required by these agencies, a valid written fire safety approval from a fire safety expert is required.

(b) If the fire safety approval is withdrawn or restricted, the personal care home shall notify the Department orally within 24 hours and in writing within 48 hours of the withdrawal or restriction.

(c) If a building is structurally renovated or altered after the initial fire safety approval is issued, the personal care home shall submit the new fire safety approval, or written certification that a new fire safety approval is not required, from the appropriate fire safety authority. This documentation shall be submitted to the Department within 30 days of the completion of the renovation or alteration.

(d) Authorized agents of the Department will request additional fire safety inspections by the appropriate agency if, during an inspection, an authorized agent observes possible fire safety violations.

(e) A personal care home shall be in compliance with applicable Federal, State and local statutes, ordinances, and regulations, including those statutes or regulations pertaining to fire and panic.

§ 2600.15. Abuse reporting covered by statute.

(a) The personal care home shall immediately report suspected abuse of a resident served in the home in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.701–10225.707) and 6 Pa. Code § 15.21–15.27 (relating to reporting suspected abuse).

(b) If there is an allegation of abuse of a resident involving the home's staff, the home shall immediately implement a plan of supervision or suspension of the staff person and shall submit to the personal care home regional field licensing office a plan of supervision or notice of suspension of the affected staff person.

§ 2600.16. Reportable incidents.

(a) A reportable incident includes the following:

(1) The death of a resident due to accident, abuse, neglect, homicide, suicide, malnutrition, dehydration or other unusual circumstances.

(2) Attempted suicide by a resident.

(3) A serious physical bodily injury, trauma or medication error requiring treatment at a hospital or medical facility. This does not include minor injuries such as sprains or minor cuts.

(4) A violation of a resident's rights in §§ 2600.41–2600.43 (relating to resident rights).

(5) An unexplained absence of a resident for 24 hours or more, or when the support plan so provides, a period of less than 24 hours.

(6) Misuse of a resident's funds by the personal care home staff or legal entity.

(7) An outbreak of a serious communicable disease as defined in 28 Pa. Code § 27.2 (relating to reportable diseases).

(8) Food poisoning of residents.

(9) A physical assault by or against a resident.

(10) Fire or structural damage to the personal care home.

(11) An incident requiring the services of an emergency management agency, fire department or law enforcement agency.

(12) A condition that results in an unscheduled closure of the personal care home or the relocation of the residents for more than 1 day of operation.

(13) A complaint of resident abuse, suspected abuse, referral of a complaint of resident abuse to a local authority for an investigation or the results of any investigation conducted by the personal care home of possible resident abuse.

(14) Any disasters under § 2600.107 (relating to internal and external disasters).

(15) A situation in which there are no staff to supervise the personal care home.

(16) Bankruptcy filed by the personal care home or its legal entity.

(17) Criminal convictions against the legal entity, administrator or staff that are subsequent to the reporting on the criminal history checks under § 2600.51 (relating to resident abuse and criminal history checks).

(18) A termination notice from a utility.

(b) The personal care home shall develop and implement written policies and procedures on the prevention, reporting, notification, investigation and management of reportable incidents.

(c) The personal care home shall immediately report the incident to the home regional field licensing office or a designee in a manner designated by the Department. Abuse reporting shall also follow the guidelines in § 2600.15 (relating to abuse reporting covered by statute).

(d) A preliminary written notification of incidents, on a form prescribed by the Department, shall be sent to the personal care home regional field licensing office within 5 days of the occurrence. Abuse reporting shall also follow the requirements in § 2600.15.

(e) The personal care home shall submit a final report, on a form prescribed by the Department, to the regional field licensing office immediately following the conclusion of the investigation.

(f) The personal care home shall keep a copy of the incident report on file as required by § 2600.243 (b) (relating to record retention and disposal).

§ 2600.17. Confidentiality of records.

Resident records shall be confidential, and, except in emergencies, may not be open to anyone other than the resident, the resident's designee, if any, agents of the Department and the long-term care ombudsman unless the resident, or a designee, consents, or a court orders disclosure.

§ 2600.18. Applicable health and safety laws.

A personal care home shall comply with applicable Federal, State and local statutes, ordinances and regulations, especially those statutes or regulations pertaining to fire and panic, public health, civil rights and protective services.

§ 2600.19. Waivers.

(a) A licensed personal care home may submit a written request for a waiver of a specific requirement contained in this chapter. The waiver request shall be on a form prescribed by the Department. The Department may grant a waiver of a specific section of this chapter if the following conditions are met:

- (1) There is no jeopardy to the residents of the home.
- (2) There is an alternative for providing an equivalent level of health, safety and well-being protection of the residents of the home.
- (3) Residents will benefit from the waiver of the requirement.
- (b) The scope, definitions, applicability or residents' rights under this chapter may not be waived.
- (c) Thirty days prior to the submission of the completed written waiver request to the Department, the personal care home shall provide a copy of the completed written waiver request to the residents of the home to allow the residents the opportunity to submit comments to the Department. The personal care home shall also provide the residents with the name, address and phone number of the personal care home field licensing field office to submit their comments. The home shall interview affected residents as appropriate.
- (d) A personal care home seeking a waiver shall submit a written request for a waiver to the appropriate personal care home licensing field office. A waiver granted by the Department will be in writing, also be part of the home's permanent record and shall be maintained on file in the home's records.
- (e) The personal care home shall notify the residents of the approval or denial of the waiver request. A copy of the waiver request shall be posted in a conspicuous public place within the home.
- (f) Waivers are subject to a periodic review by the Department to determine whether acceptable conditions exist for renewal of the waiver. The Department reserves the right to revoke the waiver if the conditions required by the waiver are not met.

(g) A structural waiver will not be granted to a new facility, new construction or renovations begun after _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*) Upon request, the Department will review building plans to assure compliance with the this chapter.

§ 2600.20. Resident funds.

(a) If the personal care home assumes the responsibility of maintaining a resident's financial resources, the following records shall be maintained for each resident:

- (1) A separate record of financial resources, including the dates, amounts of deposits, amounts of withdrawals and the current balance.
- (2) Deposits and expenditures shall be documented with written receipts. Disbursement of funds to the resident shall be documented and the resident shall acknowledge the receipt of funds in writing. Accounts

shall clearly reflect deposits, receipt of funds, disbursement of funds and the current balance.

(3) A record of gifts or other funds received by or deposited with the home on behalf of the resident.

(b) If the personal care home assumes the responsibility of maintaining a resident's financial resources, the following requirements shall be met:

- (1) There shall be documentation of counseling sessions, concerning the use of funds and property, if requested by the resident.
- (2) The home may not prohibit the resident's right to manage his own finances.
- (3) Resident funds and property shall only be used for the resident's benefit.
- (4) The resident shall be given funds requested within 24 hours if available, and immediately if the request is for \$10 or less. This service shall be offered on a daily basis.
- (5) The home shall obtain a written receipt from the resident for cash disbursements.
- (6) There may be no commingling of the resident's personal needs allowance with the home's or staff person's funds or the home's operating accounts.
- (7) If a home is holding funds in excess of \$200 for more than 2-consecutive months, the administrator shall notify the resident and offer assistance in establishing an interest-bearing account in the resident's name at a local Federally-insured financial institution. This does not include security deposits.

(8) The owners of the home, its administrators and employees are prohibited from being assigned power of attorney or guardianship of a resident.

(9) The home shall give the resident an annual written account of financial transactions made on the resident's behalf. The home shall provide the resident the opportunity to review his own financial record upon request during normal working hours. A copy shall be placed in the resident's record.

(10) Upon the death of a resident, the administrator shall surrender to the resident's estate funds and valuables of that resident which were entrusted to the administrator or left in the home. In addition, an itemized written account of the resident's funds and valuables, which were entrusted to the administrator, shall be surrendered, and a signed receipt shall be obtained and retained by the administrator.

(11) Within 30 days of either the termination of service by the home or the resident's decision to leave the home, the resident shall receive an itemized written account of funds, including notification of funds still owed the home by the resident or a refund owed the resident by the home.

(12) Upon discharge or transfer of the resident, the administrator shall immediately return the resident's funds being managed or being stored by the home to the resident.

§ 2600.21. Offsite services.

If services or activities are provided by the home at a location other than the premises, the home shall ensure that the residents' support plans are followed and that the health and safety needs are met for all of the residents.

§ 2600.22. Legal entity.

The legal entity shall operate the home in accordance with this chapter.

§ 2600.23. Personnel management.

The personal care home shall:

(1) Establish a work schedule and maintain copies for a year or until all litigation or audits are resolved, whichever is later.

(2) Establish and maintain written job descriptions for all positions that include:

(i) Job title.

(ii) Tasks, responsibilities and essential functions of the job.

(iii) Qualifications.

(3) Provide each staff member with a copy of the job description at the time of hire and whenever the job description is changed. This shall be documented.

§ 2600.24. Tasks of daily living.

A home shall provide residents with assistance with tasks of daily living as indicated in their support plan and assessment, including one or more of the following:

- (1) Securing transportation.
- (2) Shopping.
- (3) Making and keeping appointments.
- (4) Care of personal possessions.
- (5) Use of the telephone.
- (6) Correspondence.
- (7) Personal laundry.
- (8) Social and leisure activities.
- (9) Securing health care.
- (10) Ambulation.
- (11) Use of prosthetic devices.
- (12) Eating.

§ 2600.25. Personal hygiene.

A personal care home shall provide residents with assistance with personal hygiene as indicated in the support plan and assessment, including one or more of the following:

- (1) Bathing.
- (2) Oral hygiene.
- (3) Hair grooming and shampooing.
- (4) Dressing and care of clothes.
- (5) Shaving.

§ 2600.26. Resident-home contract: information on resident rights.

(a) Prior to, or within 24 hours after admission, a written admission contract between the resident and the personal care home shall be in place. The administrator or a designee is responsible for completing this contract and shall review and explain its contents to the resident and the resident's designee, if any, prior to signature.

(1) The contract shall be signed by the administrator or a designee, and the resident and the payer, if different from the resident, and cosigned by the resident's designee, if any, if the resident agrees. At a minimum, the contract shall specify the following:

(i) Each resident shall retain, at a minimum, the current personal needs allowance as the resident's own funds for personal expenditure. A contract to the contrary is not valid.

(ii) The actual amount of allowable resident charges for each service or item. The actual amount of the periodic—for example, monthly—charge for food, shelter, services and additional charges, and how, when and by whom payment is to be made.

(iii) An explanation of the annual screening, medical evaluation, and support plan requirements and procedures, which shall be followed if either the screening or the medical evaluation indicates the need of another and more appropriate level of care.

(iv) The party responsible for payment.

(v) The method for payment of charges for long distance telephone calls.

(vi) The conditions under which refunds will be made, including the refund of admission fees and refunds upon a resident's death.

(vii) The financial arrangements if assistance with financial management is to be provided.

(viii) The home's rules and requirements related to home services, including whether the home is designated as a smoking or nonsmoking home.

(ix) The conditions under which the agreement may be terminated including home closure as specified in § 2600.228 (relating to notification of termination).

(x) A statement that the resident is entitled to at least 30 days' advance notice, in writing, of the home's intent to change the contract.

(xi) A list of personal care services and their costs to be provided to the resident based on the outcome of the resident's support plan.

(xii) Additional services and their costs that shall be billed to the resident for the cost of services or items not included in the cost of care.

(xiii) Written information on the resident's rights and grievance procedures as specified in § 2600.41 (relating to notification of rights and complaint procedures).

(xiv) Charges to the resident for holding a bed during hospitalization or other extended absence from the home shall be specified.

(2) A personal care home may not seek or accept payments from a resident in excess of one-half of any funds received by the resident under the Senior Citizens Rebate and Assistance Act (72 P. S. §§ 4751-1—4751-12). If the personal care home will be assisting the resident to manage a portion of the rent rebate, the requirements of § 2600.20 (relating to resident funds) may apply. There may be no charge for filling out this paperwork.

(3) The resident, or a designee, has the right to rescind the contract for up to 72 hours after the initial dated signature of the contract. Rescission of the contract shall be in writing addressed to the home.

(b) The personal care home may not require or permit a resident to assign assets to the home in return for a life care contract/guarantee. Continuing care communities that have obtained a Certificate of Authority from the Insurance Department are required to provide a copy of the certificate to the Department and will then be exempt from this requirement.

(c) A copy of the signed admission contract shall be given to the resident and a copy shall be filed in the resident's record.

(d) The service needs addressed in the resident's support plan shall be available to the resident 365 days a year.

§ 2600.27. Quality management.

(a) The personal care home shall establish and implement quality assessment and management plans.

(b) At minimum, the following shall be addressed in the plan review:

- (1) Incident reports.
- (2) Complaint procedures.
- (3) Staff training.
- (4) Monitoring licensing data and plans of correction, if applicable.
- (5) Resident or family councils, or both.

(c) If the personal care home fails to establish and implement quality assessment and management plans, the Department reserves the right to create the criteria that the home will utilize in establishing those plans.

§ 2600.28. Supplemental Security Income (SSI) recipients.

(a) For a resident eligible for SSI benefits, the personal care home charges for actual rent and other services may not exceed the SSI resident's actual current monthly income reduced by the current personal needs allowance.

(b) The administrator may not include funds received as lump sum awards, gifts or inheritances, gains from the sale of property, or retroactive government benefits when calculating payment of rent for an SSI recipient or for a resident eligible for SSI benefits.

(c) An administrator may seek and accept payments from funds received as retroactive awards of SSI benefits, but only to the extent that the retroactive awards cover periods of time during which the resident actually resided in the personal care home and for which full payment has not been received.

(d) An administrator shall provide each resident who is a recipient of SSI, at no charge beyond the amount determined in subsection (a), the following items or services as needed:

- (1) Necessary personal hygiene items, such as a comb, toothbrush, toothpaste, soap and shampoo. Cosmetic items are not included.
- (2) Laundry services, including personal laundry, but not including dry cleaning or other specialized services.
- (3) Personal care services.

(e) Third-party payments made on behalf of an SSI recipient and paid directly to the home are permitted. These payments may not be used for food, clothing or shelter because to do so would reduce SSI payments. See 20 CFR 416.1100 and 416.1102 (relating to income and SSI eligibility; and what is income). These payments may be used to purchase items or services which are not food, clothing or shelter.

§ 2600.29. Refunds.

(a) If, after the personal care home gives notice of discharge or transfer in accordance with § 2600.26 (relating to requirements for resident/home contract; information on resident rights), and the resident moves out of the

home before the 30 days are over, the home shall give the resident a refund equal to the previously paid charges for rent and personal care services for the remainder of the 30-day time period. The refund shall be issued within 30 days of discharge. The resident's personal needs allowance shall be refunded within 1 week of discharge or transfer.

(b) After a resident gives notice of the intent to leave in accordance with § 2600.26, and if the resident moves out of the home before expiration of the required 30 days, the resident owes the home the charges for rent and personal care services for the entire length of the 30-day time period for which payment has not been made.

(c) If no notice is required, as set forth in subsection (d), the resident is required to pay only for the nights spent in the home.

(d) If the personal care home does not require a written notice prior to a resident's departure, the administrator shall refund the remainder of previously paid charges to the resident within 7 days of the date the resident moved from the home. In the event of a death of a resident, the administrator shall refund the remainder of previously paid charges to the estate of the resident when the room is vacated and within 30 days of death. The home shall keep documentation of the refund in the resident's file.

(e) If a resident is identified as needing a higher level of care and is discharged to another facility, the personal care home shall provide a refund within 7 days from the date of discharge when the room is vacated or within 7 days from notification by the facility.

§ 2600.30. Fees.

After the Department determines that a personal care home meets the requirements for a license, the Department's issuance or renewal of a license to a home is contingent upon receipt by the Department of an application fee based on the number of beds in the home, as follows:

- (1) 0-20 beds—\$15.
- (2) 21-50 beds—\$20.
- (3) 51-100 beds—\$30.
- (4) 101 beds and over—\$50.

RESIDENT RIGHTS

§ 2600.41. Notification of rights and complaint procedures.

(a) Upon admission each resident and, if applicable, the resident's family and advocate, if any, shall be informed of the resident rights and the right to lodge complaints without retaliation, or the fear or threats of retaliation of the home or its staff against the reporter. Retaliation includes discharge or transfer from the home.

(b) The information in subsection (a) shall be communicated in an easily understood manner, and in a language understood by or mode of communication of the resident and, if applicable, the resident's family and advocate, if any.

(c) A copy of the resident's rights and the complaint procedures, shall be posted in a conspicuous place in the home and given to the resident and, if applicable, the resident's family and advocate, if any, upon admission.

(d) A statement signed by the resident and, if applicable, the resident's family and advocate, if any, acknowledging receipt of a copy of the information specified in

subsection (a), or documentation of efforts made to obtain signature, shall be kept in the resident's record.

(e) A resident and, if applicable, the resident's family and advocate, if any, have the right to lodge a complaint with the home for an alleged violation of specific or civil rights without retaliation, or the fear or threats of retaliation.

(f) The personal care home shall ensure investigation and resolution of complaints regarding an alleged violation of a resident's rights. The procedures shall include the timeframes, steps, and the person or persons responsible for determining the outcome of the complaint and appeal procedures.

(g) The personal care home shall render a decision within 14-calendar days upon receipt of the complaint and inform the resident and, if applicable, the resident's family and advocate, if any, of the outcome in writing.

(h) The personal care home shall inform the resident and, if applicable, the resident's family and advocate, if any, about the right to file complaints and appeals beyond the home's internal system. A resident and, if applicable, the resident's family and advocate, if any, may file a complaint with the local ombudsman in the area agency on aging, or in the case of abuse incidents with the local protective services unit of the area agency on aging, law enforcement or the appropriate Departmental licensing office. These phone numbers shall be posted in large print in a conspicuous place in the home.

(i) In addition, the resident and, if applicable, the resident's family and advocate, if any, shall be made aware of the telephone number of the Governor's Action Center Toll Free Line, (800) 932-0784, the personal care home complaint hotline, (800) 254-5164, the local long-term care ombudsman, and other advocacy agencies to which the resident and, if applicable, the resident's family or advocate, if any, may address complaints when the resident and, if applicable, the resident's family or advocate, if any, feels that complaints have not been properly resolved through the home's complaint procedure. The telephone numbers for the Governor's Action Center Toll Free Line, the personal care home complaint hotline and the local long-term care ombudsman shall be posted in large print in a conspicuous place in the home.

(j) The resident has the right to access the public inspection records of the home.

§ 2600.42. Specific rights.

(a) A resident may not be discriminated against because of race, color, religious creed, disability, handicap, ancestry, sexual orientation, national origin, age or sex.

(b) A resident may not be neglected, abused, mistreated or subjected to corporal punishment.

(c) A resident shall be treated with dignity and respect.

(d) A resident shall be informed of the rules of the personal care home and given 30 days' written notice prior to the effective date of a new rule of the home.

(e) A resident shall have private access to a telephone in the personal care home. Local calls shall be without charge.

(f) A resident shall have the right to receive and send mail.

(1) Outgoing mail may not be opened or read by staff persons.

(2) Incoming mail may not be opened or read by staff persons unless upon resident request.

(g) A resident shall have the assurance that personal care homes shall be open 365 days and provide the service needs identified in the resident's support plan.

(h) A resident shall have the right to practice the religion or faith of the resident's choice, or not to practice any religion or faith.

(i) A resident shall receive assistance in accessing medical, behavioral health, rehabilitation services and dental treatment.

(j) A resident shall receive assistance in attaining clean, seasonal clothing that is age and gender appropriate.

(k) A resident and, upon their request, the resident's family and advocate, if any, shall have the right to access, review and request modifications to the resident's record.

(l) A resident shall have the right to purchase, receive and use personal property.

(m) A resident shall have the right to leave and return to the home at reasonable times consistent with the personal care home's rules.

(n) A resident shall have the right to request and receive assistance, from the personal care home, in relocating to another facility.

(o) A resident shall be free to associate and communicate with others privately.

(p) A resident shall be free from restraints.

(q) A resident shall be compensated in accordance with State and Federal labor statutes for labor performed on behalf of the personal care home. Residents shall perform personal housekeeping tasks related directly to the resident's personal space but may not perform tasks in lieu of a staff person who is otherwise required to perform these tasks.

(r) A resident, the resident's family, advocates, if any, community service organizations and legal representatives shall have access to the personal care home during visitation hours or by appointment. A resident shall have the right to receive visitors for a minimum of 8 hours daily, 7 days per week.

(s) A resident shall have the right to privacy of self and possessions.

(t) A resident shall have the right to voice complaints and recommend changes in policies and services of the personal care home without fear of reprisal, intimidation or retaliation.

(u) A resident shall have the right to remain in the personal care home, as long as it is operating with a license, except in the circumstances of:

(1) Nonpayment following a documented effort to obtain payment.

(2) Higher level of care needs.

(3) The resident is a danger to himself or others.

(v) A resident shall have the right to receive services contracted for in the resident's agreement.

(w) A resident shall have the right to appeal discharge, reductions, changes or denials of services originally contracted. The personal care home shall have written resident appeal policies and procedures. The resident shall receive an answer to the appeal within 14-calendar days after submission.

(x) A resident shall have the right to immediate payment by the personal care home to resident's money stolen or mismanaged by the home's staff.

(y) A resident shall have the right to manage personal financial affairs.

(z) A resident shall have the right to be free from excessive medication.

§ 2600.43. Prohibition against deprivation of rights.

(a) A resident may not be deprived of his civil rights.

(b) A resident's rights may not be used as a reward or sanction.

Subchapter B. HEALTH AND SAFETY REQUIREMENTS

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STAFFING

§ 2600.51. Resident abuse and criminal history checks.

Criminal history checks and hiring policies shall be in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102) and 6 Pa. Code Chapter 15 (relating to protective services for older adults).

§ 2600.52. Staff hiring, retention and utilization.

Staff hiring retention and utilization shall be in accordance with the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102) and 6 Pa. Code Chapter 15 (relating to protective services for older adults) and other applicable regulations.

§ 2600.53. Staff titles and qualifications for administrators.

(a) The administrator shall have one of the following qualifications:

(1) A valid license as a registered nurse from the Commonwealth.

(2) An associate's degree or 60 credit hours from an accredited college or university.

(3) A valid license as a licensed practical nurse from the Commonwealth and 1 year of work experience in a related field.

(4) A valid license as a nursing home administrator, from the Commonwealth.

(b) The administrator shall be 21 years of age or older.

(c) The administrator shall complete at least the minimum training required by the Department.

(d) The administrator shall be responsible for the administration and management of the personal care home, including the safety and protection of the residents, implementation of policies and procedures and compliance with this chapter.

(e) The administrator shall have the ability to provide personal care services, or to supervise or direct the work of others to provide personal care services.

(f) The administrator shall have knowledge of this chapter.

(g) The administrator shall have the ability to conform to applicable statutes, rules and regulations, including this chapter.

(h) The administrator shall have the ability to maintain or supervise the maintenance of financial and other records.

(i) The administrator shall be of good moral character.

(j) The administrator shall be free from a medical condition, including drug or alcohol addiction that would limit the administrator from performing duties with reasonable skill and safety.

§ 2600.54. Staff titles and qualifications for direct care staff.

Direct care staff shall have the following qualifications:

(1) Be 18 years of age or older.

(2) Have a high school diploma or GED.

(3) Be of good moral character.

(4) Be free from a medical condition, including drug or alcohol addiction that would limit the direct care staff from providing necessary personal care services with reasonable skill and safety.

§ 2600.55. Exceptions for staff qualifications.

(a) The staff qualification requirements for administrator and direct care staff do not apply to persons hired or promoted to the specified positions prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) as long as the home maintains a current license.

(b) A staff person who transfers to another licensed home, with no more than a 1-year break in service, may work in the same capacity as long as the staff person meets the qualifications outlined in subsection (a).

(c) Notwithstanding § 2600.54 (relating to staff titles and qualifications for direct care staff), a 16 or 17 year old may be employed as a staff person at a personal care home, but may not perform tasks related to medication administration, and the incontinence care or bathing of persons of the opposite sex.

§ 2600.56. Staffing.

(a) A personal care home shall employ a sufficient number of trained staff to ensure the daily provision of the aggregate total of personal care service hours required by the support plans for all residents in the

facility. At minimum, each mobile resident shall receive an average of 1 hour of personal care services per day, and each immobile resident or resident with special needs shall receive an average of 2 hours of personal care services per day.

(b) If a resident's support plan indicates that the resident's personal care service needs exceed the minimum staffing levels in subsection (a), the personal care home shall provide a sufficient number of trained direct care staff to provide the necessary level of care required by the resident's support plan. If a home cannot meet a resident's needs, the resident shall be referred to a local assessment agency or agent under § 2600.225(e) (relating to initial assessment and the annual assessment).

(c) An administrator, or a designee who is 21 years of age or older and meets the qualifications outlined in § 2600.54 (relating to staff titles and qualifications for direct care staff), shall be on the premises on a 24-hour basis. The administrator shall be present in the personal care home an average of at least 20 hours per week, or in the alternative, a designee shall meet all of the qualifications and training for an administrator under § 2600.53 (relating to staff titles and qualifications for administrators).

(d) When one or more residents requiring personal care services is physically present, the personal care home shall maintain a sufficient number of trained direct care staff to provide the necessary level of care required by the residents, and to be physically present to accommodate each resident's needs, as identified in each resident's support plan, and to ensure a safe and efficient evacuation of the home in case of an emergency. At least 75% of the personal care service hours shall be available during waking hours.

(e) A personal care home with multiple buildings that are within 300 feet of one another and have three or fewer residents present per building shall have one direct care staff person who circulates between the buildings every hour, conducting inspections of the building and checking in on the residents. Each building shall maintain an operable two-way communication system to serve residents in buildings where a direct care staff person is not present. Multiple buildings, regardless of footage from other buildings, with four or more residents present, shall provide at least one direct care staff person per building who is on the premises and awake.

(f) A personal care home with 4–15 mobile residents, all of whom are mobile, shall maintain coverage by the administrator, or a designee, or a direct care staff person who is physically present and available on the premises at all times when one or more residents requiring personal care services is physically present.

(g) In a personal care home with 16 or more mobile residents, the administrator, or a designee, shall maintain coverage by direct care staff persons who are awake, physically present and available on the premises during 24 hours of the day.

(h) During sleeping hours, there shall be at least one direct care staff person, who remains awake, available and in each building housing one or more immobile residents.

(i) Additional staffing may be required by the Department, and will be based on safety, the Department's assessment of the amount of care needed by the residents as reflected in their support plans, and the design, construction, staffing or operation of the home.

(j) Additional staff hours, or contractual services, shall be provided as necessary to meet the laundry, food service, housekeeping and maintenance needs of the personal care home.

(k) When regularly scheduled direct care staff persons are absent, the administrator shall arrange for coverage by substitute personnel who meet the direct care staff qualifications and training requirements.

(l) The administrator shall maintain a current list of the names, addresses and telephone numbers of all employees, including substitute personnel.

(m) An administrator may be counted in the staffing ratios if the administrator is scheduled to provide direct care services.

§ 2600.57. Administrator training and orientation.

(a) Prior to initial employment at a personal care home, an administrator shall successfully complete an orientation program approved by the Department and administered by the Department or its approved designee.

(b) Prior to licensure of a personal care home, the legal entity shall appoint an administrator who has successfully completed and passed a Department-approved competency-based training that includes 60 hours of Department-approved competency-based training, and has successfully completed and passed 80 hours of competency-based internship in a licensed home under the supervision of a Department-trained administrator.

(c) The 60 hours of Department-approved competency-based training shall include the following:

- (1) Fire prevention and emergency planning.
- (2) First aid training, medications, medical terminology and personal hygiene, which shall include:
 - (i) Medication procedures.
 - (ii) Cardio-pulmonary resuscitation (CPR) certification.
 - (iii) Obstructed airway techniques certification.
- (3) Local, State and Federal laws and regulations pertaining to the operation of a home.
- (4) Nutrition, food handling and sanitation.
- (5) Recreation.
- (6) Mental illness and gerontology, which shall include:
 - (i) Resident rights.
 - (ii) Care for persons with dementia and cognitive impairments.
 - (iii) Care for persons with mental retardation.
- (7) Community resources and social services.
- (8) Staff supervision, budgeting, financial recordkeeping and training, which includes the following:

(i) Writing, completing and implementing pre-admission screening tools, initial assessments, annual assessments and support plans.

(ii) Resident-home contracts.

(iii) Development of orientation and training guidelines for staff.

(d) The 80 hours of competency-based internship in a licensed personal care home under the supervision of a Department-trained administrator shall include the following:

(1) Staff supervision, budgeting, financial record keeping and training, which shall include the following:

(i) Writing, completing and implementing preadmission screening tools, initial assessments, annual assessments and support plans.

(ii) Resident-home contracts.

(iii) Staff management.

(iv) Marketing.

(2) Community resources and social services.

(3) Nutrition, food handling and sanitation, which includes the following:

(i) Housekeeping.

(ii) Dietary needs.

(iii) Laundry.

(iv) Maintenance.

(v) Safety.

(4) Medications, medical terminology and personal hygiene.

(5) Mental illness and gerontology, which includes the following:

(i) Resident rights.

(ii) Care for persons with dementia and cognitive impairments.

(iii) Care for persons with mental retardation.

(6) Local, State and Federal laws and regulations pertaining to the operation of a home.

(e) An administrator shall have at least 24 hours of annual training relating to the job duties, which includes the following:

(1) Current training in first aid, certification in obstructed airway techniques and certification in cardiopulmonary resuscitation that is appropriate for the population served. Training in first aid, obstructed airway techniques and cardiopulmonary resuscitation shall be provided by an individual certified as a trainer by a hospital or other recognized health care organization. Registered nurses, licensed practical nurses, certified registered nurse practitioners, emergency medical technicians, paramedics, physician's assistants or licensed physicians are exempt from the requirement for annual first aid training.

(2) Personal care service needs of the resident.

(3) Fire prevention and emergency planning.

(4) Medications, medical terminology and personal hygiene, which includes the following:

(i) Medication procedures.

(ii) Medication self-administration.

(iii) Infection control and general principles of cleanliness and hygiene, and areas associated with immobility such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration.

(5) Staff supervision, budgeting, financial recordkeeping and training, which includes the following:

(i) Writing, completing and implementing preadmission screening tools, initial assessments, annual assessments and support plans.

(ii) Resident-home contracts.

(iii) Development of orientation and training guidelines for staff.

(6) Local, State and Federal laws and regulations pertaining to the operation of a home.

(7) Nutrition, food handling and sanitation.

(8) Recreation.

(9) Mental illness and gerontology, which includes the following:

(i) Resident rights.

(ii) Care for persons with dementia and cognitive impairments.

(iii) Care for persons with mental retardation.

(iv) Safe management technique training, which includes positive interventions such as:

(A) Improving communications.

(B) Reinforcing appropriate behaviors.

(C) Redirection.

(D) Conflict resolution.

(E) Violence prevention.

(F) Verbal praise.

(G) Deescalation techniques.

(H) Alternatives and techniques to identify depression.

(I) Methods to identify and diffuse potential emergency safety situations.

(J) Managing medical emergencies.

(10) Community resources and social services.

(11) Staff supervision, budgeting, financial recordkeeping and training, which includes the following:

(i) Writing and completing preadmission screening tools, initial intake assessments, annual assessments and support plans.

(ii) Resident-home contracts.

(iii) Development of orientation and training guidelines for staff.

(f) An administrator who has successfully completed the training in subsections (a)—(e) shall provide written verification of successful completion to the appropriate personal care home regional field licensing office designated by the Department.

(g) A licensed nursing home administrator who is employed as a personal care home administrator prior to _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) is exempt from the training and educational requirements of this chapter if the administrator continues to meet the requirements of the State Board of Nursing Home Administrators. A licensed nursing home administrator hired as a personal care home administrator after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) shall pass the 40-hour personal care home administrators competency-based training test. A licensed nursing home administrator who fails to pass the test shall attend the required 40-hour personal care home administrators training, and retake the competency test, until a passing grade is achieved.

(h) A record of training including the person trained, date, source, content, length of each course and copies of any certificates received, shall be kept by the personal care home.

§ 2600.58. Staff training and orientation.

(a) Prior to working with residents, all staff including temporary staff, part-time staff and volunteers shall have an orientation that includes the following:

(1) General fire safety including:

(i) Evacuation procedures.

(ii) Responsibilities during fire drills.

(iii) The designated meeting place outside the building or within the fire-safe area in the event of an actual fire.

(iv) Smoking safety procedures and location of smoking areas, if applicable.

(v) The placement and use of fire extinguishers.

(vi) Smoke detectors and fire alarms.

(vii) Phone use and notification of the local fire or police departments, or both.

(2) Resident rights.

(3) Emergency medical plan.

(4) Personnel policies and procedures.

(5) General operation of the personal care home.

(b) Ancillary staff shall have a general orientation to their specific job functions as it relates to their position prior to working in that capacity.

(c) Training of direct care staff hired after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.) shall include a demonstration of job duties, followed by guided practice, then proven competency before newly-hired direct care staff may provide unsupervised direct care in any particular area. Prior to direct contact with residents, all direct care staff shall successfully complete and pass the following competency-based training including the following specific job duties and responsibilities:

(1) Resident care.

(2) ADL's.

(3) Medication procedures, medical terminology and personal hygiene.

(4) Care of residents with mental illness and cognitive impairments.

(5) Personal care services.

(6) Implementation of the initial assessment, annual assessment and support plan.

(7) Nutrition, food handling and sanitation.

(8) Recreation.

(9) Gerontology.

(10) Staff supervision, if applicable.

(11) Needs of residents with special emphasis on the residents being served in the personal care home.

(12) Safety management and prevention.

(13) Use of medications, purposes and side effects of medications, and use of universal precautions.

(14) Policies and procedures of the home, including the following:

(i) Reportable incidents.

(ii) Implementation of support plans.

(d) Ancillary staff shall have a general orientation to their specific job functions as it relates to their position

prior to working in that capacity. Ancillary staff shall receive training specific to their job function.

(e) Direct care home staff shall have at least 24 hours of annual training relating to their job duties. Staff orientation shall be included in the 24 hours of training for the first year of employment. On the job training for direct care staff may count for 12 out of the 24 training hours required annually.

(f) Training topics for the required annual training for direct care staff shall include the following:

(1) Current training in first aid, certification in obstructed airway techniques and certification in cardiopulmonary resuscitation that is appropriate for the residents served, and shall be completed by an individual certified as a trainer by a hospital or other recognized health care organization. Registered nurses, licensed practical nurses, certified registered nurse practitioners, emergency medical technicians, paramedics, physician's assistants or licensed physicians are exempt from the requirement for annual first aid training.

(2) Medication self-administration training.

(3) Understanding, locating and implementing preadmission screening tools, initial assessments, annual assessments and support plans.

(4) Care for persons with dementia and cognitive impairments.

(5) Infection control and general principles of cleanliness and hygiene and areas associated with immobility, such as prevention of decubitus ulcers, incontinence, malnutrition and dehydration.

(6) Personal care service needs of the resident.

(7) Safe management technique training, which shall include positive interventions such as:

(i) Improving communications.

(ii) Reinforcing appropriate behaviors.

(iii) Redirection.

(iv) Conflict resolution.

(v) Violence prevention.

(vi) Verbal praise.

(vii) Deescalation techniques.

(viii) Alternatives and techniques to identify depression.

(ix) Methods to identify and diffuse potential emergency safety situation.

(x) Managing medical emergencies.

(8) Care for persons with mental illness or mental retardation, or both, if the population is served in the home.

(g) Full-time, part-time and temporary staff persons and volunteers shall be trained annually on:

(1) Fire safety. Training in fire safety shall be completed by a fire safety expert or, in personal care homes serving 20 or fewer residents, by a staff person trained by a fire safety expert. Videotapes/DVD's prepared by a fire safety expert are acceptable for the training if accompanied by an onsite staff person trained by a fire safety expert.

(2) Disaster plans and recognition and response to crises and emergency situations.

(3) Resident rights.

(4) The Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102).

(5) Falls and accident prevention.

(6) New personnel policies and procedures of the home.

(7) New population groups that are being served at the home that were not previously served, if applicable.

(h) If a staff person has completed any of the required training identified in this section prior to the staff person's date of hire, the requirement for training in this section does not apply if the staff person provides written verification of completion of the training.

(i) If volunteers are used in the home as staff persons to provide direct personal care services, they shall meet the same requirements as staff provided for in this chapter.

(j) A record of training including the person trained, date, source, content, length of each course and copies of any certificates received, shall be kept on file at the home.

§ 2600.59. Staff training plan.

The administrator shall ensure that a comprehensive staff-training plan is developed and conducted annually for the development and improvement of the skills of the home's direct care staff. The staff training plan shall include the personal care home's policies and procedures for developing and conducting the staff training plan, indicating who is responsible and the time frames for completion of the following components:

(1) An annual assessment of staff training needs shall include questionnaires completed by all staff with data compiled, or a narrative summarizing group discussion of needs.

(2) An overall plan for addressing the needs identified in paragraph (1). This plan shall be based on the assessment of staff training needs, and shall indicate training content, trainers and proposed dates of training.

(3) A mechanism to collect written feedback on completed training.

(4) An annual evaluation of the staff-training plan, including the extent to which implementing the plan met the identified training needs.

§ 2600.60. Individual staff training plan.

A written individual staff training plan for each employee, appropriate to that employee's skill level, shall be developed annually with input from both the employee and the employee's supervisor. The individual training plan shall identify the subject areas and potential resources for training which meet the requirements for the employee's position and which relate to the employee's skill level and interest.

(1) The plan shall be based upon an employee's previous education, experience, current job functions and job performance.

(2) The employee shall complete the minimum training hours as listed in § 2600.58(d) (relating to staff training and orientation) with the subject selections being based upon the needs identified in the training plan.

(3) Annual documentation of the required training in the individual staff-training plan shall be maintained for all staff.

PHYSICAL SITE**§ 2600.81. Physical accommodations and equipment.**

The home shall provide or arrange for physical site accommodations and equipment necessary to meet the health and safety needs of a resident with a disability and to allow safe movement within and exiting the home.

§ 2600.82. Poisons.

(a) Poisonous materials shall be stored in their original, labeled containers.

(b) Poisonous materials shall be stored separately from food, food preparation surfaces and dining surfaces.

(c) Poisonous materials shall be kept locked and inaccessible to residents unless all of the residents living in the home are able to safely use or avoid poisonous materials.

§ 2600.83. Temperature.

(a) The indoor temperature shall be at least 70°F when residents are present in the home.

(b) If a home does not provide air conditioning, fans shall be made available to residents when the indoor temperature exceeds 80°F.

§ 2600.84. Heat sources.

Heat sources, such as steam and hot heating pipes, water pipes, fixed space heaters, hot water heaters, and radiators, exceeding 120°F that are accessible to the resident, shall be equipped with protective guards or insulation to prevent the resident from coming in contact with the heat source and being burned or otherwise harmed.

§ 2600.85. Sanitation.

(a) Sanitary conditions shall be maintained in the home.

(b) There may be no evidence of infestation of insects, rodents or other animals in the home.

(c) Trash shall be removed from the premises at least once a week.

(d) Trash in kitchens and bathrooms shall be kept in covered trash receptacles that prevent the penetration of insects and rodents.

(e) Trash outside the home shall be kept in closed receptacles that prevent the penetration of insects and rodents.

(f) A home that is not connected to a public sewer system shall have a written sanitation approval for its sewage system by the sewage enforcement official of the municipality in which the home is located.

§ 2600.86. Ventilation.

All areas of the home that are used by the resident shall be ventilated. Ventilation shall include an operable window, air conditioner, fan or mechanical ventilation that ensures airflow.

§ 2600.87. Lighting.

The home's rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps, evacuation routes, outside walkways and fire escapes shall have operable and sufficient lighting to ensure safe evacuation of all persons in the home.

§ 2600.88. Surfaces.

(a) Floors, walls, ceilings, windows, doors and other surfaces shall be clean, in good repair and free of hazards.

(b) The home may not use asbestos products for renovations or new construction.

§ 2600.89. Water.

(a) The home shall have hot and cold water under pressure in each bathroom, kitchen and laundry area to accommodate the needs of the residents in the home.

(b) Hot water temperature in areas accessible to the resident may not exceed 120°F.

(c) A home that is not connected to a public water system shall have a coliform water test at least every 3 months, by a Department of Environmental Protection-certified laboratory, stating that the water is safe for drinking. A public water system is a system that provides water to the public for human consumption, which has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

(d) If the water is deemed unsafe for drinking, the home shall conduct remediation activity in accordance with the recommendations of the Department of Environmental Protection.

(e) The home shall keep documentation of the laboratory certification, in addition to the results and corrections made to ensure safe water for drinking.

§ 2600.90. Communication system.

(a) The home shall have a working, noncoin operated, telephone with an outside line that is accessible in emergencies and accessible to persons with disabilities.

(b) The home shall have a system or method of communication that enables staff persons to contact other staff persons in the home for assistance in an emergency.

§ 2600.91. Emergency telephone numbers.

Telephone numbers for the nearest hospital, police department, fire department, ambulance, poison control and personal care home hotline number shall be posted on or by each telephone with an outside line.

§ 2600.92. Screens.

Windows, including windows in doors, shall be in good repair and securely screened when doors or windows are open.

§ 2600.93. Handrails and railings.

(a) Each ramp, interior stairway and outside steps exceeding two steps shall have a well-secured handrail.

(b) Each porch that has over a 30-inch drop shall have a well-secured railing.

§ 2600.94. Landings and stairs.

(a) Interior and exterior doors that open directly into a stairway and are used for exit doors, resident areas, and fire exits shall have a landing, which is a minimum of 3 feet by 3 feet.

(b) Interior stairs, exterior steps, walkways and ramps shall have nonskid surfaces.

§ 2600.95. Furniture and equipment.

Furniture and equipment shall be in good repair, clean and free of hazards.

§ 2600.96. First aid supplies.

(a) The home shall have at a minimum, in each building, a first aid manual, nonporous disposable gloves, antiseptic, adhesive bandages, gauze pads, thermometer, tape, scissors, breathing shield, eye coverings and syrup of ipecac. These items shall be stored together in a first aid kit.

(b) The staff shall be made aware of the location of the first aid kit.

(c) The first aid kit shall be in a location that is easily accessible to the staff.

§ 2600.97. Elevators and stair glides.

Each elevator and stair glide shall have a valid certificate of operation from the Department of Labor and Industry.

§ 2600.98. Indoor activity space.

(a) The home shall have indoor activity space for activities such as reading, recreation and group activities.

(b) The home shall have at least one furnished living room or lounge for the use of residents, their families and visitors. The combined living room or lounge areas shall be sufficient to accommodate all residents at one time. These rooms shall contain a sufficient number of tables, chairs and lighting to accommodate the residents, their families and visitors.

(c) The administrator of the home shall develop and ensure that the activities program is designed and implemented to promote each resident's active involvement with other residents, the resident's family and the community.

(d) The program shall provide social, physical, intellectual and recreational activities in a planned, coordinated and structured manner.

(e) A current weekly activity calendar shall be posted in a conspicuous place in the home that residents can access easily.

(f) The home shall have a working television and radio made available to residents in a living room or lounge area. If more than one living room or lounge area is available in the home, the largest of these shall have a working television. Large homes are encouraged to provide more than one television to allow residents an option to watch different programs. The Department will grant a waiver of this subsection if enforcement of this requirement would interfere with religious beliefs or doctrines of the residents, the home, or both. To obtain a waiver, the home's resident home contract shall contain a statement that a radio or television will not be provided by the home.

§ 2600.99. Recreation space.

The home shall provide regular access to outdoor and indoor recreation space and recreational items, including books, magazines, puzzles, games, cards, gliders, paper, markers and the like.

§ 2600.100. Exterior conditions.

(a) The exterior of the building and the building grounds or yard shall be in good repair and free of hazards.

(b) The home shall ensure that ice, snow and obstructions are removed from outside walkways, ramps, steps, recreational areas and exterior fire escapes.

§ 2600.101. Resident bedrooms.

(a) Each single bedroom shall have at least 80 square feet of floor space per resident measured wall to wall, including space occupied by furniture.

(b) Each shared bedroom shall have at least 60 square feet of floor space per resident measured wall to wall, including space occupied by furniture.

(c) Each bedroom for a resident with a physical immobility shall have 100 square feet per resident, or allow for easy passage between beds and other furniture, and for comfortable use of a resident's assistive devices, including wheelchairs, walkers, special furniture or oxygen equipment. This requirement does not apply if there is a medical order from the attending physician that states the resident can maneuver without the necessity of the additional space.

(d) No more than four residents may share a bedroom.

(e) Ceiling height in each bedroom shall be at least 7 feet for new homes licensed after _____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal.).

(f) Each bedroom shall have an operable window with a source of natural light. This window shall be able to be opened by the resident without the use of tools and shall be screened.

(g) A resident's bedroom shall be only for the occupying resident's individual use and not for activities common to other residents.

(h) A resident shall be able to access toilet, hand washing and bathing facilities without having to pass through another resident's bedroom.

(i) Bedrooms shall be equipped to ensure the resident's privacy.

(j) A resident shall have access to the resident's bedroom at all times.

(k) Each resident shall have the following in the bedroom:

(1) A bed with a solid foundation and fire retardant mattress that is in good repair, clean and supports the resident.

(2) A mattress that is plastic-covered if supplied by the home.

(3) Pillows and bedding that is clean and in good repair.

(4) A storage area for clothing that shall include a chest of drawers and a closet or wardrobe space with clothing racks or shelves accessible to the resident.

(l) Cots and portable beds are prohibited.

(m) Bunk beds are prohibited.

(n) A bedroom may not be used as a means of egress from or used as a passageway to another part of the home unless in an emergency situation.

(o) A resident may not be required to share a bedroom with a person of the opposite sex.

(p) The bedrooms shall have walls, floors and ceilings, which are finished, clean and in good repair.

(q) There shall be doors on the bedrooms.

(r) There shall be a minimum of one comfortable chair per resident per bedroom. The resident shall determine what type of chair is comfortable.

(s) There shall be a minimum of one operable ceiling light per bedroom or a minimum of one operable lamp per resident.

(t) There shall be drapes, shades, curtains, blinds or shutters on the bedroom windows, which are clean, in good repair, provide privacy, and are sufficient to cover the entire window when drawn.

§ 2600.102. Bathrooms.

(a) There shall be at least one functioning flush toilet for every six or less users, including residents, family and personnel.

(b) There shall be at least one sink and wall mirror for every six or less users, including residents, family and personnel.

(c) There shall be at least one bathtub or shower for every 15 or less users, including residents, family and personnel.

(d) There shall be slip-resistant surfaces in all bathtubs and showers.

(e) Privacy shall be provided for toilets, showers and bathtubs by partitions or doors.

(f) An individual towel, washcloth and soap shall be provided for each resident.

(g) Individual toiletry items including toothpaste, toothbrush, shampoo, deodorant, comb and hairbrush shall be made available.

(h) Toilet paper shall be provided for every toilet.

(i) A dispenser with soap shall be provided in all of the bathrooms. Bar soap is not permitted unless there is a separate bar clearly labeled for each resident.

(j) Toiletries and linens shall be in the possession of the resident in the resident's living space.

§ 2600.103. Kitchen areas.

(a) A home shall have an operable kitchen area with a refrigerator, sink, stove, oven, cooking equipment and cabinets for storage.

(b) Kitchen surfaces shall be of a nonporous material and cleaned and sanitized after each meal.

(c) Food shall be protected from contamination while being stored, prepared, transported and served.

(d) Food shall be stored off the floor or the lowest shelf shall be sealed to the floor.

(e) Food shall be labeled, dated, rotated and inventoried weekly.

(f) Food requiring refrigeration shall be stored at or below 40°F. Frozen food shall be kept at or below 0°F. Thermometers shall be required in refrigerators and freezers.

(g) Food shall be stored in closed or sealed containers.

(h) Food shall be thawed either in the refrigerator, microwave, under cool water or as part of the cooking process.

(i) Food shall be served with the holding temperature of 140°F for hot items; cold items shall have a holding temperature of 40°F or less.

(j) Eating, drinking and cooking utensils shall be washed, rinsed and sanitized after each use by a mechanical dishwasher or by a method approved by the Department of Agriculture.

(k) Garbage shall be stored in covered containers.

(l) Animals are not permitted in the kitchen or other food service areas when meals are being prepared, served or consumed.

§ 2600.104. Dining room.

(a) A dining room area shall be equipped with tables and chairs and able to accommodate the maximum number of residents scheduled for meals at any one time.

(b) Dishes, glassware and utensils shall be provided for eating, drinking, preparing and serving food. These utensils shall be clean, and free of chips or cracks. There may not be regular use of plastic/paper plates, utensils and cups for meals.

(c) Condiments shall be available at the dining table.

(d) Special provisions shall be made and adaptive equipment shall be provided, when necessary, to assist residents in eating at the table.

(e) Animals are not permitted in the dining room when meals are being prepared, served or consumed. Guide or support animals assisting a person due to blindness, deafness or physical disability or who are under the supervision of a handler or trainer of these animals are exempt from this prohibition.

(f) Midday and evening meals shall be served to residents in a dining room or dining area, except that service in the resident's room shall be available when the resident is unable to come to the dining room due to temporary illness.

(g) Breakfast shall be served to residents in a dining room or dining area except in the following situations:

(1) Service in the resident's room shall be available at no additional charge when the resident is unable to come to the dining room due to temporary illness.

(2) When room service is available in a home, a resident shall make an individual choice to have breakfast served in the resident's room. This service shall be provided at the resident's request, and may not replace daily meals in a dining area.

§ 2600.105. Laundry.

(a) Laundry service for bed linens, towels and personal clothing shall be provided by the home, at no additional charge, to residents who are recipients of or eligible applicants for Supplemental Security Income (SSI) benefits. This service shall also be made available to all residents who are unable to perform these tasks independently. Laundry service does not include dry cleaning.

(b) Laundry service for bed linens, towels and personal clothing for the residents who are not recipients of SSI shall be provided by the home unless otherwise indicated in the written agreement.

(c) The supply of linen and towels shall be sufficient to ensure a complete change of bed linen and towels at least once per week.

(d) Bed linens and towels shall be changed at least once every week

(e) Clean linens and towels shall be stored in an area separate from soiled linen and clothing.

(f) The administrator and staff shall implement reasonable measures to ensure that residents' clothing are not lost or misplaced in the process of laundering or cleaning.

(g) To reduce the risks of fire hazards, the home shall ensure all lint is removed from all clothes.

§ 2600.106. Swimming areas.

If a home operates a swimming area, it shall abide by the following requirements:

- (1) The home shall operate swimming areas in conformity with applicable laws and regulations.
- (2) The home shall develop, utilize and implement policy and procedures that protect the health and safety of all of the residents in the home.

§ 2600.107. Internal and external disasters.

(a) The home shall have written emergency procedures that shall be developed and approved by qualified fire, safety and local emergency management offices.

(b) The written emergency procedures shall be reviewed and updated annually by the administrator, qualified fire, safety and local emergency management offices.

(c) Disaster plans shall include at a minimum:

- (1) Contact names.
- (2) Contact phone numbers of emergency management agencies and local resources for the housing and emergency care of residents affected.
- (3) Alternate means of supply of utilities shall be identified and secured.
- (4) The home shall maintain at least a 3-day supply of nonperishable food and drinking water for all residents and personnel.
- (5) The home shall maintain at least a 3-day supply of all resident medications.

§ 2600.108. General health and safety.

Conditions at the home may not pose a threat to the health or safety of the residents.

§ 2600.109. Firearms and weapons.

Firearms, weapons and ammunition shall be permitted on the licensed premises of a home only when the following conditions are met:

- (1) Firearms and weapons shall be contained in a locked cabinet located in a place other than the residents' room or in a common living area.
- (2) Ammunition shall be contained in a locked area separate from firearms and weapons, and located in a place other than the residents' room or in a common living area.
- (3) The key to the locked cabinet containing the firearms, weapons and ammunition shall be in the possession of the administrator or a designee.
- (4) The administrator or a designee shall be the only person permitted to open the locked cabinet containing the firearms and weapons and the locked area containing the ammunition.
- (5) If a firearm, weapon or ammunition is the property of at least one resident, the personal care home shall have written policies regarding safety and access of firearms, weapons and ammunition. A resident may not take a firearm, weapon or ammunition out of the locked cabinet or area into living areas of the personal care home.

FIRE SAFETY**§ 2600.121. Unobstructed egress.**

(a) Stairways, hallways, doorways, passageways and egress routes from rooms and from the building shall be unlocked and unobstructed, unless the fire safety ap-

proval specified in § 2600.14 (relating to fire safety approval) permits locking of certain means of egress as specified in writing.

(b) Doors used for egress routes from rooms and from the building may not be equipped with key-locking devices, electronic card operated systems or other devices which prevent immediate egress of residents from the building.

§ 2600.122. Exits.

Unless otherwise regulated by the Department of Labor and Industry, all buildings shall have at least two independent and accessible exits from every floor, each arranged to reduce the possibility that both will be blocked in an emergency situation.

§ 2600.123. Emergency evacuation.

(a) In homes housing five or more immobile residents, the fire alarm system shall be directly connected to the local fire department or 24-hour monitoring service that has been approved by the local fire department.

(b) Evacuation routes shall be well lighted and clear of obstructions at all times.

(c) Exit doors shall be equipped so that they can be easily opened by residents from the inside without the use of a key.

(d) Copies of an emergency evacuation plan as specified in § 2600.107 (relating to internal and external disasters) shall be prepared by the administrator, in conjunction with fire, safety or local emergency management offices. The plan shall be posted throughout the home and a copy shall be kept in the administrator's records.

(e) A diagram of each floor showing corridors, line of travel, exit doors and location of the fire extinguishers and pull signals shall be posted on each floor in view of residents and personnel.

§ 2600.124. Notification of local fire officials.

The home shall notify local fire officials in writing of the address of the home, location of the bedrooms, and the assistance needed to evacuate in an emergency. Documentation of notification shall be kept.

§ 2600.125. Flammable and combustible materials.

(a) Combustible materials may not be located near heat sources and hot water heaters.

(b) Flammable materials shall be used safely and stored away from heat sources and hot water heaters.

(c) The materials described in subsections (a) and (b) shall be inaccessible to residents.

§ 2600.126. Furnaces.

(a) A professional furnace cleaning company or trained maintenance staff persons shall inspect furnaces at least annually. Documentation of the inspection shall be kept.

(b) Furnaces shall be cleaned according to the manufacturer's instructions. Documentation of the cleaning shall be kept.

§ 2600.127. Space heaters.

Portable space heaters are prohibited. Nonportable space heaters shall be adequately vented and installed with permanent connections and protectors.

§ 2600.128. Supplemental heating sources.

(a) The use of kerosene burning heaters is prohibited.

(b) Wood and coal burning stoves shall be used only if a local fire department or other municipal fire safety authority inspects them annually. Wood and coal burning stoves shall be cleaned every year. Documentation of these inspections and cleanings shall be maintained.

§ 2600.129. Fireplaces.

(a) A fireplace shall be securely screened or equipped with protective guards while in use.

(b) A fireplace chimney and flue shall be inspected at least once a year. Written documentation of the inspection shall be kept on file.

(c) A resident shall only be permitted to tend to the fire under staff supervision.

§ 2600.130. Smoke detectors and fire alarms.

(a) There shall be an operable automatic smoke detector located within 15 feet of each bedroom door.

(b) The smoke detectors specified in subsection (a) shall be located in common areas or hallways.

(c) Smoke detectors and fire alarms shall be of a type approved by the Department of Labor and Industry or local fire authority, or listed by Underwriters Laboratories.

(d) If the home serves four or more residents or if the home has three or more stories including the basement and attic, there shall be at least one smoke detector on each floor interconnected and audible throughout the home or an automatic fire alarm system that is audible throughout the home.

(e) If one or more residents or staff persons are not able to hear the smoke detector or fire alarm system, all smoke detectors and fire alarms shall be equipped so that each person with a hearing impairment will be alerted in the event of a fire.

(f) All smoke detectors and fire alarms shall be tested for operability at least once monthly. A written record of the monthly testing shall be kept.

(g) If a smoke detector or fire alarm becomes inoperative, repair shall be completed within 48 hours of the time the detector or alarm was found to be inoperative.

(h) The home's fire safety procedures shall indicate the emergency procedures that will be immediately implemented until the smoke detector or fire alarms are operable.

(i) In homes housing five or more immobile residents, the fire alarm system shall be directly connected to the local fire department or 24-hour monitoring service approved by the local fire department.

§ 2600.131. Fire extinguishers.

(a) There shall be at least one operable fire extinguisher with a minimum 2-A rating for each floor, including the basement and attic.

(b) If the indoor floor area on a floor including the basement or attic is more than 3,000 square feet, there shall be an additional fire extinguisher with a minimum 2-A rating for each additional 3,000 square feet of indoor floor space.

(c) A fire extinguisher with a minimum 2A-10BC rating shall be located in each kitchen. The kitchen extinguisher meets the requirements for one floor as required in subsection (a).

(d) Fire extinguishers shall be listed by Underwriters Laboratories or approved by Factory Mutual Systems.

(e) Fire extinguishers shall be accessible to staff persons. Fire extinguishers shall be kept locked if access to the extinguisher by a resident could cause a safety risk to the resident. If fire extinguishers are kept locked, each staff person shall be able to immediately unlock the fire extinguisher in the event of a fire emergency.

(f) Fire extinguishers shall be inspected and approved annually by a fire safety expert. The date of the inspection shall be on the extinguisher.

§ 2600.132. Fire drills.

(a) An unannounced fire drill shall be held at least once a month.

(b) There shall be a documented annual fire safety inspection and fire drill conducted by a fire safety expert. The administrator shall keep documentation of this drill and inspection.

(c) A written fire drill record shall be kept of the date, time, the amount of time it took for evacuation, the exit route used, the number of residents in the home at the time of the drill, the number of residents evacuated, the number of staff evacuated, problems encountered and whether the fire alarm or smoke detector was operative.

(d) Residents shall be able to evacuate the entire building into a public thoroughfare, or to a fire-safe area designated in writing within the past year by a fire safety expert, within 2 1/2 minutes or within the period of time specified in writing within the past year by a fire safety expert. The fire safety expert may not be an employee of the home.

(e) A fire drill shall be held during sleeping hours once every 6 months.

(f) Alternate exit routes shall be used during fire drills.

(g) Fire drills shall be held on different days of the week, at different times of the day and night, on different and normal staffing shifts, not routinely held when additional staff persons are present, and not routinely held at times when resident attendance is low.

(h) Residents shall evacuate to a designated meeting place outside the building or within the fire-safe area during each fire drill.

(i) A fire alarm or smoke detector shall be set off during each fire drill.

(j) Elevators may not be used during a fire drill or a fire.

§ 2600.133. Exit signs.

(a) Signs bearing the word "EXIT" in plain legible letters shall be placed at all exits.

(b) If the exit or way to reach the exit is not immediately visible, access to exits shall be marked with readily visible signs indicating the direction to travel.

(c) Exit sign letters shall be at least 6 inches in height with the principal strokes of letters at least 3/4 inch wide.

RESIDENT HEALTH

§ 2600.141. Resident health exam and medical care.

(a) A resident shall have a health examination that is documented on standardized forms provided by the Department within 60 days prior to admission or within 30 days after admission. The resident health examination shall be completed annually thereafter. The exam shall include the following:

(1) A general physical examination by a licensed physician, physician's assistant or nurse practitioner.

(2) Medical diagnosis including physical or mental disabilities of the resident, if any.

(3) Medical information pertinent to diagnosis and treatment in case of an emergency.

(4) Special health or dietary needs of the resident.

(5) Allergies.

(6) Immunization history.

(7) Medication regimen, contraindicated medications and medication side effects.

(8) Body positioning and movement stimulation for residents, if appropriate.

(9) Health status with required written consent in accordance with applicable laws.

(10) Specific precautions to be taken if the resident has a communicable disease, to prevent spread of the disease to other residents.

(11) Annually updated mobility assessment or at the Department's request.

(b) Residents shall have access to medical care. If a resident needs assistance obtaining this care, the home shall make the arrangements for the resident.

§ 2600.142. Physical and behavioral health.

(a) Each home shall address in the resident's support plan the dental, vision, hearing, mental health or other behavioral care services that will be made available to the resident, or referrals for the resident to outside services if deemed necessary by the health exam. This requirement does not mandate a home to pay for the cost of these medical and behavioral care services.

(b) If a resident refuses routine medical or dental examination or treatment, the refusal and the continued attempts to train the resident about the need for health care shall be documented in the resident's record.

(c) If a resident has a serious medical or dental condition, reasonable efforts shall be made to obtain consent for treatment, from the resident or a designee, in accordance with applicable laws.

§ 2600.143. Emergency medical plan.

(a) The home shall have a written emergency medical plan that ensures immediate and direct access to emergency medical care and treatment. If a resident becomes ill or injured and is unable to secure necessary care, the administrator or a designee shall secure necessary assistance or care. Arrangements shall be made in advance between the administrator or a designee and the resident regarding the physician or dentist and designated person or community agency to be contacted, in case of illness or injury, and those persons shall be contacted.

(b) If admission to a hospital is necessary, the resident shall be transported to the hospital of the resident's choice, if possible.

(c) The emergency medical plan shall include the following:

(1) The hospital or source of health care that will be used in an emergency.

(2) The method of transportation to be used.

(3) An emergency-staffing plan.

(d) Current emergency medical and health information shall be made available at all times for each resident in case the resident requires emergency medical attention.

The following information shall accompany the resident when the resident needs emergency medical attention:

(1) The resident's name, age and birth date.

(2) The resident's Social Security number.

(3) The resident's medical diagnosis.

(4) The resident's physician's name and telephone number.

(5) Current medication, including the dosage and frequency.

(6) A list of allergies.

(7) Other relevant medical conditions to make available in case of a medical emergency.

(8) Insurance or third party payer and identification number.

(9) A power of attorney.

(10) A designated contact person with a current address and telephone numbers.

(11) Personal information and related instructions from the resident regarding advanced directives, do not resuscitate orders or organ donation if the resident has executed the documents.

(12) The home shall develop an individualized plan to contact the resident's family or designated emergency contact person, if applicable. The support plan shall be part of the resident record and staff shall be able to access the support plan in an emergency.

(e) If the resident's medical condition, as determined by a physician, indicates the need for a transfer to a hospital or long term care facility, the administrator shall notify the resident's designated emergency contact person or family member, or both, as appropriate, and shall provide whatever assistance is necessary in making arrangements for the resident's transfer to an appropriate facility.

§ 2600.144. Use of tobacco and tobacco-related products.

(a) A home may permit smoking tobacco and using tobacco-related products in designated areas of the personal care home.

(b) If a home permits smoking in designated areas, the home shall ensure that proper safeguards are taken at all times to:

(1) Prevent fire hazards involved in smoking, including providing ashtrays, outside ventilation, smoke detectors, fire retardant furniture and fire extinguishers in designated smoking areas.

(2) Ensure the protection of the rights of nonsmoking residents.

(c) The designated smoking area shall be in an area that is a safe distance from heat sources, hot water heaters and areas containing combustible or flammable materials.

(d) Smoking tobacco and using tobacco-related products during the transportation of a resident, which is provided by the home, is prohibited.

(e) Smoking in resident bedrooms is prohibited.

(f) If a home has a designated smoking area, the home's written fire safety procedures shall include the designated smoking area.

(g) Written fire safety procedures shall be followed.

§ 2600.145. Supervised care.

Personal care services shall be provided by trained, qualified staff persons and with ongoing oversight and general supervision of the resident's care by the administrator. A resident in need of services that are beyond services available in the home in which the resident resides shall be referred to the appropriate assessment agency.

NUTRITION**§ 2600.161. Nutritional adequacy.**

(a) Meals shall be offered which meet the nutritional needs of the resident in accordance with the Recommended Daily Allowance (RDA) of the Food and Nutrition Board of the National Research Council of the National Academy of Science.

(b) At least three nutritionally well-balanced meals shall be provided daily to the resident. Each meal shall include an alternative food and drink item from which the resident may choose.

(c) Additional portions of meals and beverages at meal-times shall be available for the resident.

(d) Each meal shall contain at least one item from the dairy, protein, fruits and vegetables, and grain food groups, unless otherwise prescribed in writing by a licensed physician or certified nurse practitioner for a specific resident.

(e) Dietary alternatives shall be available for a resident who has special health needs, religious beliefs regarding dietary restrictions or vegetarian preferences.

(f) Therapeutic diets as prescribed by a physician or certified nurse practitioner, shall be followed. Documentation shall be retained in the resident's record.

(g) Drinking water shall be available to the residents at all times. Other beverages shall be available and offered to the resident at least every 2 hours.

§ 2600.162. Meal preparation.

(a) Foods shall be prepared in a consistency designed to meet the needs of the resident.

(b) Uneaten food from a person's dish may not be served again or used in the preparation of other dishes.

(c) There may not be more than 14-16 hours between the evening meal and the first meal of the next day, unless a resident's physician has prescribed otherwise, and there may not be more than 4-6 hours between breakfast and lunch, and between lunch and supper.

(d) Food shall be procured from sources approved or considered satisfactory by Federal, State or local authorities. Outdated or spoiled food or severely dented cans may not be used.

(e) When a resident misses a meal, food adequate to meet daily nutritional requirements shall be available and offered to the resident.

(f) Meals shall include a variety of hot and cold food.

(g) Milk shall be pasteurized.

(h) Adaptive eating equipment or utensils shall be made available and meet the needs of the residents.

(i) If a home contracts for food services, the contractor shall provide meals and snacks that meet the nutritional and dietary recommendations of the Recommended Daily Allowance (RDA) of the Food and Nutrition Board of the National Research Council of the National Academy of Science.

(j) Menus, stating the specific food being served at each meal, shall be prepared for 1 week in advance. Menus shall be posted for the current week and 1 week in advance, and shall be posted in a conspicuous place where the resident can review them.

(k) Past menus of meals that were served, including changes, shall be retained for at least 1 month.

(l) A change to a menu shall be posted and accessible to a resident in advance of the meal.

(m) Food stored, prepared or served shall be clean and safe for human consumption.

§ 2600.163. Personal hygiene for food service workers.

(a) Staff, volunteers or residents involved in the storage, preparation, serving and distributing of food shall wash their hands with hot water and soap prior to working in the kitchen areas or after using the toilet room.

(b) Staff, volunteers or residents shall follow sanitary practices while working in the kitchen areas.

(c) Staff, volunteers or residents involved with the storage, preparation, serving and distributing of food shall be in good health.

(d) Staff, volunteers or residents who have a discharging or infected wound, sore, lesion on hands, arms or any exposed portion of their body may not work in the kitchen areas in any capacity.

§ 2600.164. Withholding or forcing of food prohibited.

(a) A home may not withhold meals, beverages, snacks or desserts as punishment.

(b) A resident may not be forced to eat food.

(c) If a resident refuses to eat consecutively during a 24-hour period, the resident's primary care physician and the resident's designee or a family member shall be immediately notified.

TRANSPORTATION**§ 2600.171. Transportation.**

(a) The following requirements apply whenever staff persons or volunteers of the home provide transportation for the resident. These requirements do not apply if transportation is provided by a source other than the home.

(1) Staff to resident ratios specified in § 2600.56 (relating to staffing) apply.

(2) All vehicle occupants shall be in appropriate a safety restraint at all times the vehicle is in motion.

(3) The driver of a vehicle shall be 18 years of age or older and possess a valid driver's license.

(4) The driver of the vehicle cannot be a resident receiving services in the home.

(5) At least one staff member transporting residents has completed the initial new hire direct care staff training.

(6) The vehicle shall have nonporous disposable gloves, antiseptic, adhesive bandages, gauze pads, tape, scissors, and syrup of ipecac that are stored together.

(7) During vehicle operation the driver may only use a hands-free cellular telephone.

(b) The home shall maintain current copies of documentation for the following:

- (1) Vehicle registration.
- (2) Valid driver's license.
- (3) Vehicle insurance.
- (4) Current inspection.
- (5) Commercial Driver's License where applicable.

(c) The home shall assist a resident with the coordination of transportation to and from medical appointments, if requested by resident, or if indicated in the resident's support plan.

MEDICATIONS

§ 2600.181. Self-administration.

(a) A home shall provide residents with assistance, as needed, with medication prescribed for the resident's self-administration. This assistance includes helping the resident to remember the schedule for taking the medication, storing the medication in a secure place and offering the resident the medication at the prescribed times.

(b) Medication not prescribed for the resident's self-administration shall be administered by a licensed physician, licensed dentist, licensed physician's assistant, registered nurse, certified registered nurse practitioner, licensed practical nurse or licensed paramedic, as appropriate.

(c) The resident's support plan shall identify if the resident is able to self-administer medications.

(d) If the resident does not need assistance with medication, medication may be stored in a resident's room for self-administration. The administrator shall take precautions to assure that medications, which are stored in the resident's room, are maintained in a safe and secure manner to protect against contamination, spillage and pilferage.

(e) A resident is capable of self-administering medications if the resident can use the medication as prescribed in the manner prescribed. The resident shall be able to recognize and distinguish the medication and know the condition or illness for which the medication is prescribed, the correct dosage and when the medication is to be taken. Examples include being capable of placing medication in the resident's own mouth and swallowing completely, applying topical medications and not disturbing the application site, properly placing drops in eyes, correctly inhaling inhalants and properly snorting nasal therapies.

§ 2600.182. Storage and disposal of medications and medical supplies.

(a) Prescription, OTC and CAMs shall be kept in their original labeled containers and may not be removed more than 2 hours in advance of the scheduled administration. Assistance with injections and sterile liquids shall be provided immediately upon removal of the medication from its container.

(b) Prescription, OTC, CAM and syringes shall be kept in an area or container that is locked.

(c) Prescription, OTC and CAM stored in a refrigerator shall be kept in a separate locked container.

(d) Prescription, OTC and CAM shall be stored separately.

(e) Prescription, OTC and CAM shall be stored under proper conditions of sanitation, temperature, moisture and light comply with the manufacturer's instructions.

(f) Prescription, OTC and CAM, discontinued and expired medications, and prescription medications for residents who are no longer served at home shall be destroyed in a safe manner according to the Department of Environmental Protection and all Federal and State regulations. When a resident permanently leaves the home, the resident's medications shall be given to the resident, the designated person, if any, or the person or entity taking responsibility for the new placement on the day of departure from the home.

(g) Antiseptics and medicines for external use shall be stored separately from oral and injectable medicines.

(h) Prescription, OTC, CAM and syringes shall be stored in accordance with Federal and State regulations.

§ 2600.183. Labeling of medications.

(a) The original container for prescription medications shall be labeled with a pharmacy label.

(b) OTC, CAM and sample medications shall be labeled with the original label.

(c) If the OTC and CAM belong to the resident, they shall be identified with the resident's name.

(d) Sample medications shall be identified to the particular resident's use and accompanied by a physician's order.

§ 2600.184. Accountability of medication and controlled substances.

(a) The home shall develop and implement policy and procedures addressing the methods to ensure the safekeeping of medications.

(b) At a minimum, the policy and procedures shall have:

(1) Documentation of the receipt and administration of controlled substances and prescription medications.

(2) A process that will be followed to investigate and account for missing medications and medications omissions.

(3) Limited access to medication storage areas.

§ 2600.185. Use of medications.

(a) Prescription, OTC, CAM and sample medications shall be clearly marked for whom the medication was prescribed or approved.

(b) If the home helps with self-administration, then the only prescription, OTC and CAM medications that are allowed to be given are those prescribed, approved or ordered by a licensed physician, certified registered nurse practitioner, licensed dentist or physician's assistant within its scope of practice.

(c) Verbal changes in medication may only be made by the prescriber and shall be documented in writing in the resident's record and the medication record as soon as the home is notified of the change.

§ 2600.186. Medication records.

(a) If a resident stores medication for self-administration in the resident's room, a current list of prescribed medications taken by a resident as reported to the home shall be maintained in that resident's record.

(b) If the home helps the resident with self-administration, a medication record shall be kept to include the following for each resident's prescription, OTC and CAM:

- (1) The prescribed dosage.
- (2) Possible side effects.
- (3) Contraindicated medications.
- (4) Specific administration instructions.
- (5) The name of the prescribing physician.
- (6) Drug allergies.
- (7) Dosage, date, time and the name of the person who helped with the self-administration of the medication.

(c) The information in subsection (b)(7) shall be recorded at the same time each dosage of medication is self-administered.

(d) If a resident refuses to take a medication, the refusal shall be documented in the resident's record and reported to the physician by the end of the shift. Subsequent refusals to take a prescribed medication shall be reported as required by the physician.

§ 2600.187. Medication errors.

(a) Documentation of medication errors shall be kept in the medication record. Medication errors include the failure to self-administer medication, self-administering the incorrect medication, self-administering the correct medication in an incorrect dosage, failure to document the self-administration of the medication, self-administering the correct medication at the incorrect time or medication taken by the wrong resident. A medication error shall be reported to the physician immediately.

(b) The home shall evaluate medication errors to include the following:

- (1) There shall be a system in place to identify and document medication errors and the home's pattern of error.
- (2) There shall be documentation of the follow-up action that was taken to prevent future medication errors.

§ 2600.188. Adverse reaction.

If a resident has a suspected adverse reaction to a medication, the home shall immediately consult a physician. The resident's family shall be notified, if applicable. The home shall document adverse reactions, the physician's response and any action taken in the resident's record.

SAFE MANAGEMENT TECHNIQUES

§ 2600.201. Safe management techniques.

(a) The home shall use positive interventions to modify or eliminate a behavior that endangers residents, staff or others. Positive interventions include improving communications, reinforcing appropriate behavior, redirection, conflict resolution, violence prevention, verbal praise, deescalation techniques and alternatives, techniques or methods to identify and defuse potential emergency situations.

(b) A home shall incorporate a quality improvement program designed to continuously review, assess, and analyze the home's ongoing steps to positively intervene when a resident demonstrates a behavior that endangers residents, staff or others.

§ 2600.202. Prohibition on the use of seclusion and restraints.

(a) The following procedures are prohibited in the homes:

(1) Seclusion, defined as involuntary confinement of a resident in a room from which the resident is physically prevented from leaving.

(2) The use of aversive conditioning, defined as the application of startling, painful or noxious stimuli.

(3) Pressure point techniques, defined as the application of pain for the purpose of achieving compliance.

(4) A chemical restraint, defined as use of any medication or biological for the purpose of immobilizing the resident, inducing a state of sleep or unconsciousness, or reducing the ability to move freely.

(i) When a physician orders a drug that is part of the resident's ongoing support plan, and has documented as such for treating the symptoms of mental, emotional, or behavioral condition, the drug is not considered as a chemical restraint.

(ii) A drug ordered by a licensed physician or dentist as part of ongoing medical treatment, or as pretreatment prior to a medical or dental examination or treatment, is not a chemical restraint.

(5) A mechanical restraint, defined as a device that restricts the movement or function of a resident or portion of a resident's body.

(i) Examples of mechanical restraints include handcuffs, anklets, wristlets, camisoles, helmet with fasteners, muffs and mitts with fasteners, poseys, waist straps, head straps, papoose boards, restraining sheets and similar devices.

(ii) A mechanical restraint does not include assistive devices, such as orthopedically prescribed appliances, surgical dressings and bandages, protective helmets, supportive body bands, and supports utilized for the achievement of functional body position or proper balance that have been prescribed by a medical professional.

(6) A manual restraint, as defined in § 2600.4 (relating to definitions).

SERVICES

§ 2600.221. Activities program.

The administrator shall develop a program of activities designed to promote each resident's active involvement with other residents, the resident's family and the community. The program shall provide social, physical, intellectual and recreational activities in a planned, coordinated and structured manner. A current weekly activity calendar shall be posted in a conspicuous place in the home.

§ 2600.222. Community social services.

The administrator shall encourage and assist residents to use social services in the community which may benefit the resident, including a county mental health and mental retardation program, a drug and alcohol program, a senior citizens center, an area agency on aging or a home health care agency.

§ 2600.223. Description of services.

(a) The home shall have a written description of services and activities that the home provides to include the following:

(1) The scope and general description of the services provided by the home.

(2) The criteria for admission and discharge.

(3) Specific services provided by the home.

(b) The home shall develop written procedures for the delivery and management of services from admission to discharge.

§ 2600.224. Preadmission screening tool.

(a) A determination shall be made, prior to admission, and documented on the standardized preadmission screening tool in conjunction with the resident-home contract that the needs of the resident can be met by the services provided by the home.

(b) An applicant whose personal care service needs cannot be met by the home shall be referred to a local appropriate assessment agency or agent.

§ 2600.225. Initial assessment and the annual assessment.

(a) A resident shall have a written initial assessment that is documented on standardized forms provided by the Commonwealth, within 72 hours of admission or within 72 hours prior to admission. The personal care home administrator or a designee, or a human service agency may complete the initial assessment.

(b) The resident's initial assessment and annual assessment shall include the following areas:

- (1) Background information.
- (2) Medical assessment.
- (3) Social assessment.
- (4) Mobility assessment.
- (5) ADL assessment.
- (6) IADL assessment.
- (7) Medication assessment.
- (8) Psychological assessment.

(c) A home may use its own assessment forms, if its forms include the same information in subsection (b).

(d) In addition to the initial assessment at admission, the resident shall have additional assessments as follows:

(1) Annually within 30 days before or 30 days after the resident's anniversary date of admission.

(2) If the condition of the resident materially changes prior to the annual assessment, the review shall be completed and updated on the current version.

(3) At the request of the State agency upon cause to believe that an update is required.

(4) At the time of a hospital discharge.

(e) A resident who is referred by a State mental hospital, a State mental retardation center, a county mental health and mental retardation program, a drug and alcohol program or an area agency on aging may not be admitted to a home without first obtaining a written assessment of the resident's needs from the referral agent. The assessment shall include an identification of the personal care services required by the resident and shall be used to complete the preadmission screening tool and if admitted the initial intake assessment.

(f) If the resident's physician or local assessment agency determines that the resident requires a higher level of care, a plan for placement shall be made as soon

as possible by the administrator in conjunction with the resident or designated person, or both.

(g) If a resident is determined to be immobile as part of the initial intake or annual assessment, specific requirements relating to the care, health and safety of an immobile resident shall be met immediately. The resident shall be continually assessed for mobility as part of the resident's support plan.

§ 2600.226. Development of the support plan.

(a) A support plan shall be developed and implemented for each resident within 15-calendar days of admission to the home. This plan shall also be revised within 30 days upon completion of the annual assessment or upon changes in the level of functioning of the resident as indicated on the assessment. It shall address all of the needs of the resident's current assessment including the resident's personal care needs.

(b) The resident or the resident's family or advocate, or both, shall be informed of the right to have the following people assist in the development of the resident's support plan:

(1) Case manager from the social service agency when the resident has a case manager.

(2) Other social service entities.

(3) The home staff.

(4) Family or advocates.

(5) Doctors.

(6) Other interested persons designated by the resident.

(c) Documentation of reasonable efforts made to involve the resident's family, with the consent of the resident, shall be kept. If the resident's family declines, this fact shall be documented in the record.

(d) Persons who participated in the development of the support plan shall sign and date the support plan.

(e) If a resident or family member chooses not to sign the support plan, proper documentation of the effort to obtain their signature must be shown.

§ 2600.227. Copies of the support plan.

The home shall make a copy of the support plan available to the resident.

§ 2600.228. Notification of termination.

(a) A resident shall have the right to request and receive assistance in relocating from the home to a facility that meets the needs of the resident.

(b) If the home initiates a discharge or transfer of a resident, or if the legal entity chooses to close the home, the home shall provide a 30-day advance written notice to the resident, the resident's legal representative, and the referral agent citing the reasons for the discharge or transfer. This shall be stipulated in the resident-home contract signed prior to admission to the home. A 30-day advance written notice may not be given if a delay in discharge or transfer would jeopardize the health or safety of the resident or others in the home, as certified by a physician. This shall occur when the resident needs psychiatric or long-term care or is abused in the home, or the Department initiates a closure of the home.

(c) A home shall give the Department written notice of its intent to close the home, not later than 60 days prior to the anticipated date of closing.

(d) A home may not require a resident to leave the home prior to 30 days following the resident's receipt of a written notice from the home regarding the intended closure of the home, except when the Department determines that removal of the resident at an earlier time is necessary for the protection of the health and safety of the resident.

(e) The date and reason for the discharge or transfer, and the destination of the resident, if known, shall be recorded in the resident record.

(f) If the legal entity chooses to voluntarily close the home, the Department working in conjunction with appropriate local authorities, shall offer relocation assistance to the residents. Each resident shall participate in planning the transfer, except in the case of an emergency and shall have the right to choose among the available alternatives after an opportunity to visit the alternative homes except in the case of an emergency. These procedures shall apply even if the resident is placed in a temporary living situation.

(g) Within 30 days of the home's closure, the legal entity shall return the license to the personal care home regional field licensing office.

(h) The only grounds for discharge or transfer of a resident from a home are for the following conditions:

- (1) If a resident is a danger to himself or others.
- (2) If the legal entity chooses to voluntarily close the home.
- (3) If a resident's functional level has advanced or declined so that the resident's needs cannot be met in the facility even with supplemental services provided by outside providers. In this situation, a plan for other placement shall be made as soon as possible by the administrator in conjunction with the resident or designated person, if any, or both. If assistance with relocation is needed, the administrator shall contact appropriate local agencies, such as the area agency on aging, county mental health/mental retardation program or drug and alcohol program, for assistance. The administrator shall also contact the appropriate personal care home regional field licensing office.

(4) If the resident's needs would require a fundamental alteration in facility program or building site.

(5) If the resident has failed to pay or cooperate with efforts to obtain public funding.

(6) If closure of the home is initiated by the Department.

SECURED UNIT REQUIREMENTS

§ 2600.231. Doors, locks and alarms.

Doors locked by using an electronic or magnetic system to prevent egress are considered mechanical device restraints and are permitted in licensed homes for specialized secured units so long as the following safety standards are met:

- (1) If the building meets current Labor and Industry occupancy certification for a small or large personal care home, the secured unit shall be located at grade level of home with an outside enclosed area such as a porch or patio located on same grade level adjacent to the secured unit.
- (2) If the building exceeds current Labor and Industry occupancy certification for a small or large home, and meets C-1 or better Life Safety or BOCA/IBC Code for

Institutional or higher rating, an above-grade unit may be approved if the other stipulations in this section are met.

(3) A mechanical device, such as a key, deadbolt or sliding bolt lock may not lock exit doors.

(4) Doors that open into the enclosed areas may not be operated by an electronic or magnetic locking system, or similar device.

(5) Residents shall have free and easy access to the enclosed areas year round, except after dusk and during inclement weather.

(6) Doors that open onto areas such as parking lots, or other open, potentially unsafe areas, shall be permitted to be locked by an electronic or magnetic system.

(7) Facilities shall provide a statement from the manufacturer, specific to that home, verifying that the electronic or magnetic system will shut down when the fire alarm system is activated, and that all doors will open easily and immediately.

(8) Written approval or a variance shall be obtained from the Department of Labor and Industry, or from the Department of Health for C-1 or Better Life Safety or BOCA/IBC or the appropriate fire safety authority in the cities of Scranton, Pittsburgh and Philadelphia.

(9) Fire alarm systems shall be interconnected to the local fire department, where available, or a 24-hour monitoring/security service approved by the local fire department.

(10) The home shall provide for even illumination and appropriate levels of light to maximize vision.

(11) The home shall minimize hazards and risk of falls through the provision of sturdy furniture, ramps and removal of clutter.

§ 2600.232. Environmental standards.

Environmental standards include the following:

- (1) The home shall provide adequate exercise space, both indoor and outdoor.
- (2) The home shall ensure that no more than two residents are housed in a bedroom regardless of its size to help the resident live as comfortably as possible in a secured unit.
- (3) Space shall be provided for privacy and for common activities.
- (4) The home shall provide a full description of the environmental cues and way-finding assistance to be utilized for the resident population.

§ 2600.233. Admission standards.

Admission standards include the following:

- (1) A complete medical and cognitive assessment, which documents the need for the resident to be placed into a secured unit, shall be completed for each resident prior to admission to a home which provides a secured unit.
- (2) A licensed physician, or a geriatric assessment team shall complete these assessments for the resident requiring the secured unit.
- (3) A complete medical and cognitive assessment is not required for the spouse or relative of the resident requiring the secured unit, if the spouse or relative does not have a diagnosis requiring the secured unit but expresses a desire to live with the resident.

(4) Each resident record shall have documentation that the resident or the resident's legal representative has consented to the resident's admission or transfer to the secured unit.

(5) The home shall maintain a written agreement containing a full disclosure of services, admission and discharge criteria, change in condition policies, services, special programming and cost and fees pertaining to the resident.

§ 2600.234. Care standards.

Care standards include the following:

(1) The home shall maintain the current assessment of the resident to confirm the diagnosis of the dementia and the assessment of other co-occurring health conditions.

(2) Within 72 hours of the admission or within 72 hours prior to the resident's admission to the secured unit, a support plan shall be developed, implemented and documented in the resident record and shall identify the resident's physical, medical, social, cognitive and safety needs, who will address these needs and the responsible person.

(3) These plans shall be reviewed at least annually or as the resident's condition changes.

(4) The resident or the resident's legal representative, or both, shall be involved in the development and review of the support plan.

§ 2600.235. Discharge standards.

Discharge standards which shall provide that if the home initiates a discharge or transfer of a resident, or the legal entity chooses to close the home, the administrator shall give a 60-day advance written notice to the resident, the resident's legal representative and the referral agent citing the reasons for the discharge or transfer. This requirement shall be stipulated in the resident-home contract signed prior to admission to the secured unit.

§ 2600.236. Administrator training.

Administrator training includes the following:

(1) In addition to the training requirements found in § 2600.57 (relating to administrator training and orientation), the administrator of the home with a secured unit shall complete orientation related to dementia, secured unit management and staff training.

(2) Ongoing education shall be competency-tested training including the following content areas specific to the stage of dementia and addressing issues particular to the resident:

- (i) Psychosocial issues.
- (ii) Specific cultural issues.
- (iii) Psychological changes.
- (iv) Functional consequences of other age-related diseases.
- (v) Interpersonal skills in communications and team building.
- (vi) Care-giving strategies.
- (vii) Sexuality issues.
- (viii) Nutrition issues.
- (ix) Communication issues with residents and family and therapeutic activities, techniques and strategies.
- (x) Medication use, effects and side effects.

(xi) Abuse prevention and resident rights consistent with the Older Adult Protective Services Act (35 P. S. §§ 10225.101—10225.5102).

§ 2600.237. Staff training on dementia.

In addition to the training requirements in § 2600.58 (relating to staff training and orientation), all staff of a secured unit shall receive and successfully pass competency-based training related to dementia, to include the following:

(1) The normal aging-cognitive, psychological and functional abilities of older persons.

(2) The definition and diagnosis of dementia, description of reversible and irreversible causes, and an explanation of differences between dementia, delirium and depression.

(3) The definition of dementia and related disorders, progression, stages and individual variability.

(4) Communication techniques.

(5) The description of behavioral symptoms of dementia and how to manage resident behaviors.

(6) The role of personality, culture and environmental factors in behavioral symptoms and dementia care.

(7) The home's philosophy of dementia care, including mission statement, goals, policies and procedures.

(8) Working with family members.

(9) Resources for residents with dementia and their families.

(10) Team building and stress reduction for the staff.

(11) The Older Adult Protective Services Act (35 P. S. §§ 10225.701—10225.707).

§ 2600.238. Additional staffing.

Residents of secured units are considered to be mentally immobile. In addition to the requirements of § 2600.56 (relating to staffing), the Department will exercise its option to require additional staffing when necessary.

§ 2600.239. Programming standards.

Programming standards include the following:

(1) Activity programming in the secured unit, which shall maximize independence while focusing on strengths and abilities.

(2) General activity programming, which shall be offered with a frequency that meets the individual needs of the resident.

(3) Resident participation in general activity programming, which shall:

- (i) Have a purpose that the resident can appreciate and endorses.
- (ii) Be done voluntarily.
- (iii) Respect the resident's age and social status.
- (iv) Take advantage of the resident's retained abilities.

§ 2600.240. Notification to Department.

Notification to the Department is required as follows:

(1) Sixty days prior to the secured unit becoming operational for the first time, the legal entity of the home shall notify the appropriate Department regional office in writing of the home's need or desire to implement a secured unit within the home.

(2) If the home makes changes to the current secured unit with respect to increase or decrease of resident capacity, change in locking system, additional doors to be locked or floor plan changes, the legal entity of the home shall notify the appropriate regional field licensing office in writing, 60 days prior to completion of these changes.

(3) The following documents shall be included in the written notification:

- (i) The name, address and legal entity of the home.
- (ii) The name of the administrator of the home.
- (iii) The total resident population of the home.
- (iv) The total resident population of the secured unit.
- (v) A building description and general information.
- (vi) A unit description.
- (vii) The type of locking system.
- (viii) Emergency egress.
- (ix) A sample of a 2-week staffing schedule.
- (x) Verification of completion of additional training requirements.
- (xi) The operational description of the secured unit locking system of all doors.
- (xii) The manufacturer's statement regarding the secured unit locking system.
- (xiii) A written approval or a variance from the Department of Labor and Industry, or the appropriate fire safety authority in the cities of Scranton, Pittsburgh and Philadelphia.
- (xiv) The name of the municipality or 24-hour monitoring service maintaining the interconnection with the home's fire alarm system.
- (xv) A statement from the local fire and building code authorities of meeting all applicable fire safety and building code requirements.
- (xvi) A sample plan of care and service for the resident addressing the physical, medical, social, cognitive and safety needs, who will address these needs and the responsible person
- (xvii) The activity standards to be followed.
- (xviii) A sample of the complete medical and cognitive preadmission assessment, which is completed upon admission and reviewed and updated annually.
- (xix) A sample consent form from the resident, or the resident's legal representative agreeing to the resident's placement in the secured unit.
- (xx) A sample of the written agreement containing full disclosure of services, admission and discharge criteria, change in condition policies, services, special programming and cost and fees.
- (xxi) A description of environmental cues being utilized.
- (xxii) A general floor plan of the entire home.
- (xxiii) A specific floor plan of the secured unit, outside enclosed area and exercise space.

§ 2600.241. Mobility standards.

(a) An immobile person who does not require the services in or of a long-term care facility, but who does require personal care services, may be admitted to a home as a resident.

(b) If a resident is determined to be immobile as part of the initial or annual standardized screening instrument

including mobility assessment, specific requirements relating to the care, health and safety of an immobile resident shall be met immediately.

(c) The administrator shall notify the appropriate regional field licensing office within 30 days when an immobile person is admitted to the home or the date when a resident becomes immobile in order for field office staff to evaluate compliance of the home with staffing requirements for homes housing immobile residents.

RESIDENT RECORDS

§ 2600.251. Resident records.

- (a) A separate record shall be kept for each resident.
- (b) The entries in a resident's record shall be permanent legible, dated and signed by the person making the entry.
- (c) The home shall maintain resident records on standardized forms utilized by the home.
- (d) The administrator shall maintain individual resident records on the premises where the resident lives. Resident records shall be made available to residents during normal working hours.
- (e) The home shall comply with § 2600.17 (relating to confidentiality of records).

§ 2600.252. Content of records.

- (a) Each resident's record shall include personal information such as:
 - (1) The name, gender, admission date, birth date and Social Security number.
 - (2) The race, height, weight, color of hair, color of eyes and identifying marks.
 - (3) A current photograph of the resident that is no more than 2 years old.
 - (4) Language or means of communication spoken or used by the resident.
- (b) Each resident's record shall include emergency information such as:
 - (1) The name, address, telephone number and relationship of a designated person to be contacted in case of an emergency.
 - (2) The name, address and telephone number of the resident's physician or source of health care and health insurance information, if any.
 - (3) The current and previous 2 years' physician's examination reports, including copies of the medical evaluation forms.
 - (4) A list of prescribed medications.
 - (5) Dietary restrictions.
 - (6) A record of incident reports for the individual resident.
 - (7) A list of allergies, if known.
 - (8) The documentation of physician visits and orders, including orders for the services of visiting nurse or home health agencies.
- (c) The emergency information contents and procedures shall accompany residents as specified in § 2600.143 (relating to emergency medical plan).
- (d) Additionally, each resident's record shall include:
 - (1) The initial intake assessment and the most current version of the annual assessment.

- (2) A support plan.
- (3) A court order, if applicable.
- (4) The resident's medical insurance information.
- (5) The date of entrance into the home, relocations and discharges, including the transfer of the resident to other homes owned by the same licensee.
- (6) An inventory of the resident's personal property as voluntarily declared by the resident upon admission and voluntarily updated.
- (7) An inventory of the resident's property entrusted to the administrator for safekeeping.
- (8) The financial records of residents receiving assistance with financial management.
- (9) The reason for termination of services or transfer of the resident, the date of transfer and the destination.
- (10) Copies of transfer and discharge summaries from hospitals, if available.
- (11) If the resident dies in the home, a record of the death of the resident. A copy of the official death certificate shall be retained in the resident's file.
- (12) Signed notification of rights, grievance procedures and applicable consent to treatment protections specified in § 2600.41 (relating to notification of rights and complaint procedures).
- (13) A copy of the resident-home contract
- (14) The individual personal care services to be provided and changes in the services.
- (15) A termination notice, if any.

§ 2600.253. Record retention and disposal.

Each home shall have and utilize a policy and procedures for closure and storage of the original or reprographic reproduction of resident records. The policy and procedure shall include the following:

- (1) The resident's entire record shall be maintained for a minimum of 3 years following the resident's discharge from the home or until any audit or litigation is resolved.
- (2) The resident's record shall be destroyed 4 years after the resident's discharge from the home. The records shall be destroyed in a manner that protects confidentiality.
- (3) The home shall maintain a log of resident records destroyed on or after _____. (*Editor's Note:* The blank refers to the effective date of adoption of the proposal.). This log shall include the resident's name, record number, birth date, admission date and discharge date.

§ 2600.254. Record access and security.

- (a) Records of active and discharged residents shall be maintained in a confidential manner, which prevents unauthorized access.
- (b) Each home shall have and utilize a policy and procedures addressing record accessibility, security, storage, authorized use and release, and who is responsible for the records.
- (c) Resident identifying information shall be stored in locked containers or a secured, enclosed area used solely for record storage and be accessible at all times to the administrator or a designee.

ENFORCEMENT

§ 2600.261. Classification of violations.

(a) The Department will classify each violation of this chapter pertaining to homes into one of three categories as described in paragraphs (1)—(3). A violation identified may be classified as Class I, Class II or Class III, depending upon the severity, duration and the adverse effect on the health and safety of residents.

(1) *Class I.* Class I violations have a substantial probability of resulting in death or serious mental or physical harm to a resident.

(2) *Class II.* Class II violations have a substantial adverse effect upon the health, safety or well being of a resident.

(3) *Class III.* Class III violations are minor violations, which have an adverse effect upon the health, safety or well being of a resident.

(b) The Department's criteria for determining the classification of violations are available from the appropriate personal care home regional field licensing office.

§ 2600.262. Penalties.

(a) The Department will assess a penalty for each violation of this chapter.

(b) Penalties will be assessed on a daily basis from the date on which the citation was issued until the date the violation is corrected, except in the case of Class II violations.

(c) In the case of a Class II violation, assessment of the penalty will be suspended for 5 days from the date of citation to permit sufficient time for the licensee to correct the violation. This time period may be extended for good cause. If the violation has not been corrected within the 5-day period, the fine will be retroactive to the date of citation.

(d) The Department will assess a penalty of \$20 per resident per day for each Class I violation. Each Class I violation shall be corrected within 24 hours.

(e) The Department will assess a minimum penalty of \$5 per resident per day, up to a maximum penalty of \$15 per resident per day, for each Class II violation.

(f) There is no monetary penalty for Class III violations unless the home fails to correct the violation within 15 days.

(g) Failure to correct a Class III violation within 15 days may result in a penalty assessment of up to \$3 per resident per day for each Class III violation retroactive to the date of the citation.

(h) If a home is found to be operating without a license, a penalty of \$500 will be assessed. After 14 days, if the home operator cited for operating without a license fails to file an application for a license, the Department will assess an additional \$20 for each resident for each day during which the home operator fails to apply.

(i) A home charged with a violation of this chapter or Chapter 20 (relating to licensure or approval of facilities and agencies) has 30 days to pay the assessed penalty in full.

(j) If the home wishes to contest the amount of the penalty or the fact of the violation, the home shall forward the assessed penalty, not to exceed \$500, to the Secretary of Public Welfare (Secretary) for placement in an escrow account with the State Treasurer. A letter

stating the wish to appeal the citation or penalty shall be submitted with the assessed penalty. This process constitutes an appeal.

(1) If, through an administrative hearing or judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the Secretary will, within 30 days, remit the appropriate amount to the licensee together with interest accumulated on these funds in the escrow deposit.

(2) Failure to forward payment of the assessed penalty to the Secretary of Public Welfare within 30 days will result in a waiver of the right to contest the fact of the violation or the amount of the penalty.

(3) After an administrative hearing or a waiver of the administrative hearing, the assessed penalty amount will be made payable to the "Commonwealth of Pennsylvania." It will be collectible in a manner provided by law for the collection of debts.

(4) If a home liable to pay the penalty neglects or refuses to pay the penalty upon demand, the failure to pay will constitute a judgment in favor of the Commonwealth in the amount of the penalty, together with the interest and costs that may accrue on these funds.

(5) Money collected by the Department under this section will be placed in a special restricted receipt account and will be used first to defray the expenses incurred by residents relocated under this chapter or Chapter 20. The Department each year will use money remaining in this account to assist with paying for enforcement of this chapter relating to licensing. Fines collected will not be subject to 42 Pa.C.S. § 3733 (relating to deposits into account).

(6) The Department will review the determinations of Class II and Class III violations made by the personal care home regional field licensing offices. This will be done on a monthly basis to ensure the uniformity and consistency of the classification process.

(7) Semiannually, the Department will review the standard criteria for the classification of violations and evaluate the use of these guidelines. This review is to ensure the uniformity and consistency of the classification process.

§ 2600.263. Revocation or nonrenewal of licenses.

(a) The Department will temporarily revoke the license of a personal care home if, without good cause, one or more Class I violations remain uncorrected 24 hours after the personal care home has been cited for the violation.

(b) The Department will temporarily revoke the license of a personal care home if, without good cause, one or more Class II violations remain uncorrected 15 days after the citation.

(c) Upon the revocation of a license in the instances described in subsections (a) and (b), or if the personal care home continues to operate without applying for a

license as described in § 2600.262(h) (relating to penalties), residents shall be relocated.

(1) If the relocation of residents is due to the failure of the personal care home to apply for a license, the Department will offer relocation assistance to the residents. This assistance will include each resident's involvement in planning the relocation, except in the case of an emergency. Each resident shall have the right to choose among the available alternatives after an opportunity to visit the alternative personal care homes. These procedures will occur even if the residents are placed in a temporary living situation.

(2) A resident will not be relocated if the Secretary of Public Welfare determines in writing that the relocation is not in the best interest of the resident.

(d) The revocation of a license may terminate upon the Department's determination that its violation is corrected.

(e) If, after 3 months, the Department has cause to refuse or to deny a new license for a personal care home, the prior license is revoked under this section.

(1) Revocation or nonrenewal under this section will be for a minimum of 5 years.

(2) A personal care home, which has had a license revoked or not renewed under this section, will not be allowed to operate, staff or hold an interest in a personal care home which applies for a license for 5 years after the revocation or nonrenewal.

(f) If a personal care home has been found to have Class I violations on two or more separate occasions during a 2-year period without justification, the Department will revoke or refuse to renew the license of the personal care home.

(g) The power of the Department to revoke or refuse to renew or issue a license under this section is in addition to the powers and duties of the Department under section 1026 of the Public Welfare Code (62 P. S. § 1026).

§ 2600.264. Policies, plans and procedures of the personal care home.

Policies, plans and procedures, which the personal care home is required by this chapter to develop, shall be implemented and followed by the personal care home.

CHAPTER 2620. (Reserved)

(Editor's Note: The Department is proposing to delete Chapter 2620 as it currently appears in the Pennsylvania Code, pages 2620-1 to 2620-40 (serial pages (242443) to (242450), (257369) to (257372), (242455) to (242458), (257373) to (257378) and (242465) to (242482).)

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