

# PENNSYLVANIA BULLETIN

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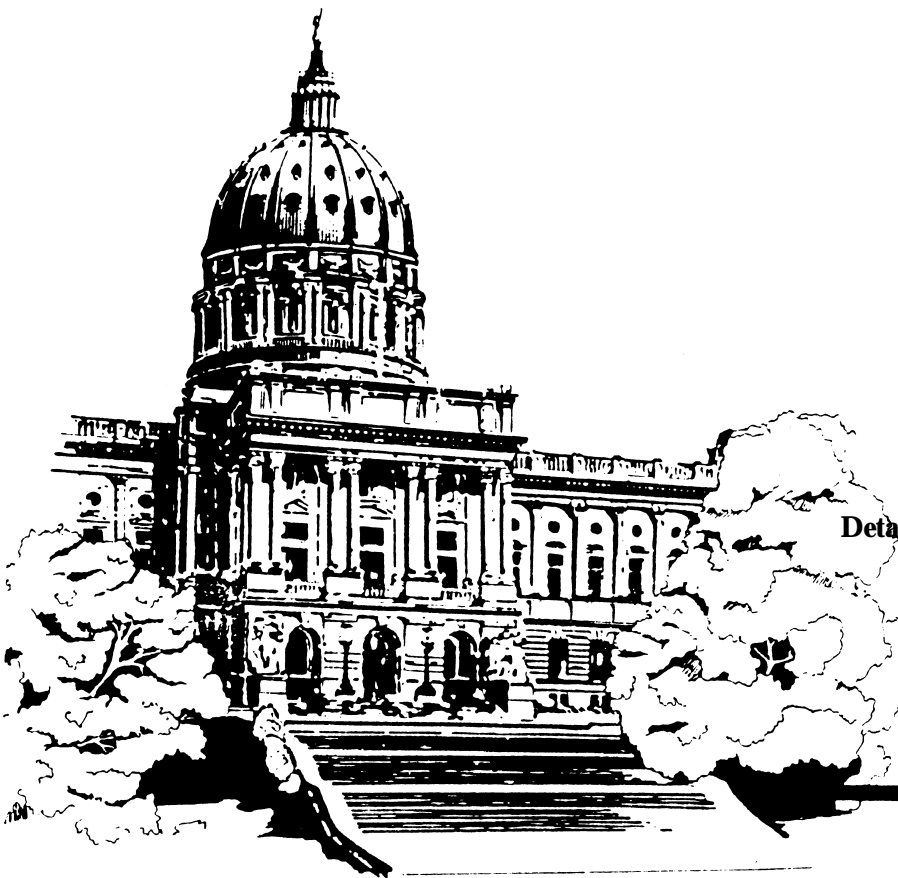
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**Agencies in this issue:**

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Pennsylvania Public Utility Commission  
Philadelphia Regional Port Authority  
Public School Employees' Retirement Board  
Turnpike Commission

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**No. 343, June 2003**

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

## ***Pennsylvania Bulletin***

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

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

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

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

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

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

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

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

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

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

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

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

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

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

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### Printing Format

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

### Fiscal Notes

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

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

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# List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2003.

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# THE GENERAL ASSEMBLY

## Recent Actions during the 2003 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2003 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
<b>2003 GENERAL ACTS ENACTED—ACT 003 through 004</b>					
003	Jun 10	HB0266	PN0992	immediately	Controlled Substance, Drug, Device and Cosmetic Act—prohibited acts and penalties
004	Jun 10	HB0267	PN0993	immediately	Crimes Code (18 Pa.C.S.)—drug trafficking, sentencing and penalties

### Effective Dates of Statutes

The effective dates specified above for laws and appropriation acts were contained in the applicable law or appropriation act. Where no date is specified or where the effective date specified is prior to the date of enactment, the effective date is 60 days after final enactment except for statutes making appropriations or affecting budgets of political subdivisions. See 1 Pa.C.S. §§ 1701—1704 (relating to effective dates of statutes).

### Advance Copies of Statutes

Section 1106 of Title 1 of the *Pennsylvania Consolidated Statutes* provides that the prothonotaries of each county shall file advance copies of statutes in their offices for public inspection until the Laws of Pennsylvania are generally available. Section 2406(h) of The Administrative Code of 1929 provides that the Department of General Services shall distribute advance sheets of the Laws of Pennsylvania to each law judge of the courts, to every county and public library of this Commonwealth and to each member of the General Assembly. These copies shall be furnished without charge. The Department shall also mail one copy of each law enacted during any legislative session to any person who pays to it the sum of \$20.

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore-PHMC, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0053, accompanied by a check or money order in the sum of \$20, payable to the "Commonwealth of Pennsylvania."

ROBERT W. ZECH, Jr.,  
*Director*  
*Legislative Reference Bureau*

[Pa.B. Doc. No. 03-1240. Filed for public inspection June 27, 2003, 9:00 a.m.]

## Recent Actions during the 2003 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2003 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
<b>2003 GENERAL ACTS ENACTED—ACT 005 through 006</b>					
005	Jun 17	HB0235	PN0264	July 1, 2003	Game Code (34 Pa.C.S.)—age of holders of falconry permits and disabled person permits
006	Jun 17	HB0331	PN0377	immediately	Game Code (34 Pa.C.S.)—disabled person permits for bow and arrow or crossbow

### Effective Dates of Statutes

The effective dates specified above for laws and appropriation acts were contained in the applicable law or appropriation act. Where no date is specified or where the effective date specified is prior to the date of enactment, the effective date is 60 days after final enactment except for statutes making appropriations or affecting budgets of political subdivisions. See 1 Pa.C.S. §§ 1701—1704 (relating to effective dates of statutes).

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ROBERT W. ZECH, Jr.,  
*Director*  
*Legislative Reference Bureau*

[Pa.B. Doc. No. 03-1241. Filed for public inspection June 27, 2003, 9:00 a.m.]

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# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 35]

#### Amendments to Rules of Appellate Procedure, Business of the Superior Court

The Superior Court has rescinded a section of the Appellate Rules concerning the brief for the appellant due to the adoption by the Supreme Court of Pa. R.A.P. 2111(a)(10) and 2111(d). This rescission is reflected in the Pennsylvania Rules of Appellate Procedure—Business of the Superior Court, with the rescission of Rule 3520, appearing in Pa. Code Chapter 35.

This change became effective June 5, 2003.

ERNEST GENNACCARO,  
*Chief Staff Attorney*

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE III. MISCELLANEOUS PROVISIONS

#### CHAPTER 35. BUSINESS OF THE SUPERIOR COURT

#### APPEALS AND ARGUMENT LISTS

Rule 3520. [ **Brief of the Appellant** ] (Rescinded).

[ **There shall be appended to the brief of the appellant a copy of the statement of matters complained of on appeal, filed with the trial court pursuant to Pa. R.A.P. 1925(b). If the trial court has not entered an order directing the filing of such a statement, the brief shall contain a statement the no order to file a statement pursuant to Pa. R.A.P. 1925(b) was entered by the trial court.** ]

[Pa.B. Doc. No. 03-1242. Filed for public inspection June 27, 2003, 9:00 a.m.]

### PART II. INTERNAL OPERATING PROCEDURES

[210 PA. CODE CH. 67]

#### Amendments to Commonwealth Court Internal Op- erating Procedures

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART II. INTERNAL OPERATING PROCEDURES

#### CHAPTER 67. INTERNAL OPERATING PROCEDURES OF THE COMMONWEALTH COURT

#### APPELLATE JURISDICTION

#### § 67.29. Decisions; Effect of Disagreements.

(a) If a draft opinion in circulation in any case produces any combination of four or more proposed dissents, objections[, **concurrences and concurrences in result,**] or **concurring opinions**, the opinion-writing

judge shall not file the opinion but shall notify the president judge to list the case for consideration the next judicial conference. **For purposes of this subsection the notation “concur in result only” shall not be considered in the foregoing combination.** If, pursuant to vote after judicial conference consideration, a majority of all of the judges, as well as a majority of the judges who heard the case or to whom it was submitted on briefs, favor the result reached in the circulated draft opinion, that opinion, together with any concurring or dissenting opinions and notations of concurrences or dissents, shall be filed. Otherwise, if judicial conference consideration and vote does not warrant reassignment in accordance with § 254, the president judge shall list the case for reargument before the court en banc.

\* \* \* \* \*

#### DECISIONS

#### § 67.57. Reporting of Unreported Opinions.

After an opinion has been filed as unreported, the court, at any time on its own motion or on the motion of any [ **party to the case** ] **person**, may order the opinion to be reported. Motions to report unreported opinions [ **by parties** ] shall be filed within 30 days after the filing of the opinion, and may be granted by majority vote of the commissioned judges.

JAMES G. COLLINS,  
*President Judge*

[Pa.B. Doc. No. 03-1243. Filed for public inspection June 27, 2003, 9:00 a.m.]

## Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. IV]

#### Order Adopting Amendment to Rule 407 and Revi- sion of Comment; No. 313 Supreme Court Rules; Doc. No. 1

#### Order

*Per Curiam:*

Now, this 12th day of June, 2003, upon the recommendation of the Committee on Rules of Evidence, this proposal having been published before adoption at 33 Pa.B. 197 (January 11, 2003) 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 Rule of Evidence 407 and revision of comment is hereby amended as follows.

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

#### Annex A

### TITLE 225. RULES OF EVIDENCE

#### ARTICLE IV. RELEVANCY AND ITS LIMITS

#### Rule 407. Subsequent Remedial Measures

When, after an injury or harm allegedly caused by an event, measures are taken which, if taken previously,

would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove that the party who took the measures was negligent or engaged in culpable conduct, or produced, sold, designed, or manufactured a product with a defect or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for impeachment, or to prove other matters, if controverted, such as ownership, control, or feasibility of precautionary measures.

#### Comment

Pa.R.E. 407 is substantially the same as F.R.E. 407. The wording has been modified in order to clarify two ambiguities in the federal formulation.

The first sentence of Pa.R.E. 407 makes clear that the rule of exclusion favors only the party who took the subsequent remedial measures. Though F.R.E. 407 is silent on the point, the courts have generally held that the federal rule does not apply when one other than the alleged tortfeasor takes the action because the reason for the rule (to encourage remedial measures) is not then implicated. See, e.g., *TLT-Babcock, Inc. v. Emerson Electric Co.*, 33 F.3d 397, 400 (4th Cir. 1994) (collecting cases).

The last sentence of Pa.R.E. 407 makes clear that the rule's exception for evidence that is offered to prove matters such as ownership, control, or feasibility of precautionary measures, applies only when those issues are controverted. Though the federal rule, as worded, can be construed to mean that only feasibility need be controverted, the cases have generally interpreted it to mean that any issue for which evidence is admitted under the rule's exception must be controverted. See, e.g., *Hall v. American Steamship Co.*, 688 F.2d 1062, 1066-67 (6th Cir. 1982); *Hull v. Chevron U.S.A., Inc.*, 812 F.2d 584, 586-87 (10th Cir. 1987).

*Duchess v. Langston Corp.*, 564 Pa. 529, 769 A.2d 1131 (2001), is a case dealing with the admissibility of evidence of subsequent remedial measures in a strict product liability case, and, in particular, the applicability of exceptions to the rule of exclusion when the evidence is offered to prove feasibility of precautionary measures, or to impeach the credibility of a witness.

The original wording of Pa.R.E. 407 applied to negligence cases, but, like the original wording of F.R.E. 407, left open whether it applied to strict product liability cases. In *Duchess v. Langston Corp.*, 564 Pa. 529, 769 A.2d 1131 (2001), the Supreme Court held that it did. The rule was amended to make this clear.

**Official Note:** Adopted September 11, 1998, effective October 1, 1998; Comment revised June 12, 2003, effective July 1, 2003.

#### FINAL REPORT

##### *Amendment of Pa.R.E. 407 and Revision of Comment*

On June 12, 2003, upon the recommendation of the Committee on Rules of Evidence, the Supreme Court adopted the changes to Pa.R.E. 407 and Comment effective July 1, 2003. These changes are made to reflect the opinion of the Supreme Court in *Duchess v. Langston Corp.*, 769 A.2d 1131 (Pa. 2001). This Amended Rule 407 makes it clear that evidence of subsequent remedial measures is not admissible in products liability cases. The amended rule expands the interpretation of the two exceptions to the exclusionary rule, i.e., when evidence is

offered to (a) prove feasibility of precautionary measures, or (b) to impeach the credibility of a witness. The rule of exclusion favors only the party who took the subsequent remedial measures.

[Pa.B. Doc. No. 03-1244. Filed for public inspection June 27, 2003, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CHS. 200, 400, 1000, 2950, 2970, 3000 AND 4000]

**Amendment of Rule 1018.1 Governing the Notice to Defend and Conforming Amendments; No. 393 Civil Procedural Rules; Doc. No. 5**

#### Order

*Per Curiam:*

*And Now*, this 10th day of June, 2003, the Pennsylvania Rules of Civil Procedure are amended as follows:

I. Rule 1018.1 is amended to read as follows.

II. Rules 237.4, 237.5, 430 and 4009.33 are amended to read as follows.

III. Rules 2964, 2965, 2966, 2974.2, 2974.3, 3146, 3252, 3282, and 3288 are amended to read as follows.

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

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### **Rule 237.4. Form of Notice of Praecipe to Enter Judgment of Non Pros.**

The notice required by Rule 237.1(a)(2) shall be substantially in the following form:

\* \* \* \* \*

**YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO FILE A COMPLAINT IN THIS CASE. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR RIGHT TO SUE THE DEFENDANT AND THEREBY LOSE PROPERTY OR OTHER IMPORTANT RIGHTS. [ YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP: ]**

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

\* \* \* \* \*

**Rule 237.5. Form of Notice of Praecipe to Enter Judgment by Default.**

The notice required by Rule 237.1(a)(2) shall be substantially in the following form:

\* \* \* \* \*

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. [ YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP: ]

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

\* \* \* \* \*

**CHAPTER 400. SERVICE OF ORIGINAL PROCESS**

**SERVICE PURSUANT TO SPECIAL ORDER OF COURT**

**Rule 430. Service Pursuant to Special Order of Court. Publication.**

\* \* \* \* \*

(b)(1) If service of process by publication has been authorized by rule of civil procedure or order of court, the publication shall be by advertising a notice of the action once in the legal publication, if any, designated by the court for the publication of legal notices and in one newspaper of general circulation within the county. The publication shall contain the caption of the action and the names of the parties, state the nature of the action and conclude with a notice substantially in the following form:

*NOTICE*

\* \* \* \* \*

[ YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. ]

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

\* \* \* \* \*

**CHAPTER 1000. ACTIONS AT LAW**

**Subchapter A. CIVIL ACTION**

**PLEADINGS**

**Rule 1018.1. Notice to Defend. Form.**

\* \* \* \* \*

(b) [CAPTION]  
NOTICE

\* \* \* \* \*

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER [ OR CANNOT AFFORD ONE ], GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW [ TO FIND OUT WHERE YOU CAN GET LEGAL HELP ]. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

\* \* \* \* \*

*Official Note:*

\* \* \* \* \*

This rule applies to all complaints including those where service is by publication. For the mandatory content of the publication in such cases see Rule [ 1009(f) ] 430(b).

When a defendant is [ a nonresident ] served outside the United States, [ Rules 2081(a), 2131.2(a), 2157.2(a) and 2182(a) provide ] Rule 1026(b) provides a sixty-day period for pleading.

(c) Each court shall by local rule designate the officer, organization, agency or person to be named in the notice from whom [ legal help ] information can be obtained.

\* \* \* \* \*

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES**

**Rule 4009.33. Motion for Entry Upon Property of a Person Not a Party.**

\* \* \* \* \*

(c) The notice required by subdivision (a) shall be substantially in the following form:

(CAPTION)  
IMPORTANT NOTICE

\* \* \* \* \*

YOU MAY WISH TO TAKE THIS NOTICE TO A LAWYER WHO CAN ADVISE YOU. IF YOU DO NOT HAVE A LAWYER AND WISH TO OBTAIN ONE, CONTACT [THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:] THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

\* \* \* \* \*

Conforming amendments are made to the following rules of civil procedure as follows:

Rule 2964.	Notice of Judgment and Execution Required by Rule 2958.1. Form.
Rule 2965.	Notice of Judgment and Execution Required by Rule 2958.2. Form.
Rule 2966.	Notice of Judgment and Execution Required by Rule 2958.3. Form.
Rule 2974.2.	Notice of Judgment and Execution Required by Rule 2973.2. Form.
Rule 2974.3.	Notice of Judgment and Execution Required by Rule 2973.3. Form.
Rule 3146.	Judgment against garnishee upon default or admission in answer to interrogatories.
Rule 3252.	Writ of execution; money judgments.
Rule 3282.	Petition. Averments. Notice to Defend.
Rule 3288.	Petition. Averments. Notice to Defend.

[YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.]

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

[Pa.B. Doc. No. 03-1245. Filed for public inspection June 27, 2003, 9:00 a.m.]

## PART I. GENERAL

## [231 PA. CODE CH. 1000]

Amendment of the Explanatory Comment to Rule 1023.1 et seq.; No. 392 Civil Procedural Rules; Doc. No. 5

## Order

*Per Curiam:*

And Now, this 10th day of June, 2003, the Explanatory Comment to Pennsylvania Rule of Civil Procedure 1023.1 et seq. is amended to read as follows.

Whereas prior distribution and publication of these amendments would otherwise be required, it has been determined that the amendments are of a perfunctory nature and that immediate promulgation of the amendments is required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately.

(*Editor's Note:* This Order amends the Explanatory Comment that appears at 32 Pa.B. 2315, 2316 (May 11, 2002).)

## EXPLANATORY COMMENT

\* \* \* \* \*

## II. Practice under the rule

The rule leaves for resolution on a case-by-case basis, considering the particular circumstances involved, the question as to when [a motion for violation of] Rule 1023.1 should be [served and when, if filed, it should be decided] invoked. Ordinarily the [motion] written notice and demand for withdrawal or correction of the paper should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely. In other circumstances, it should not be served until the other party has had a reasonable opportunity for discovery. Given the "safe harbor" provisions discussed below, a party cannot delay [serving its Rule 1023.1 motion] invoking Rule 1023.1 until conclusion of the case (or judicial rejection of the offending contention).

\* \* \* \* \*

The rule provides that requests for sanctions must be made as a separate motion, i.e., not simply included as an additional prayer for relief contained in another motion. The motion for sanctions cannot be filed until at least 28 days [or such other period as the court may set] after being served] after service of a written notice and demand, upon the party whose conduct is claimed to violate the rule, that the offending document or portion of the document be withdrawn or appropriately corrected. If, during this period, the alleged violation is corrected, as by withdrawing (whether formally or informally) some allegation or contention, the motion may not be filed with the court. These provisions are intended to provide a type of "safe harbor" against motions under Rule 1023.1 in that a party will not be subject to sanctions under Rule 1023.1 on the basis of another party's motion unless, after [receiving the motion] having been served with the written notice and demand, it refuses to withdraw that allegation or contention or to acknowledge that it does not currently have evidence to support it. The timely withdrawal of an allegation or contention will protect a party against a motion for sanctions.

To stress the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the "safe harbor" period begins to run only upon service of the [motion] written notice and demand. In most cases, however, counsel should give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve [a Rule 1023.1 motion] the written notice and demand.

## III. Sanctions

\* \* \* \* \*

The sanction should be imposed on the persons—whether attorneys, law firms, or parties—who have violated the rule or who may be determined to be responsible for violation. The person signing, filing, submitting, or advocating a document has a nondelegable responsibility to the court and, in most situations, is the person to be sanctioned for a violation. Absent exceptional circumstances, a law firm is to be held also responsible when one of its partners, associates, or employees is determined to have violated the rule. Since such a motion may be filed only if the offending paper is not withdrawn or corrected within 28 days after service of the [ motion ] written notice and demand, it is appropriate that the law firm ordinarily be viewed as jointly responsible under established principles of agency.

\* \* \* \* \*

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,  
Chair

[Pa.B. Doc. No. 03-1246. Filed for public inspection June 27, 2003, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## BEAVER COUNTY

### Local Rules of Civil Procedure; No. 10130 of 2001

#### Order

Beaver County Local Rules of Civil Procedure are amended to add New Rules L3101, L3101.1, and L3101.2 as follows.

This order and New Rules 3101, 3101.1 and 3101.2 shall be effective thirty days after publication in the *Pennsylvania Bulletin*. The Court Administrator of Beaver County shall submit seven certified copies of this order and the attachments to the Administrative Office of Pennsylvania Courts, two certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one certified copy to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court and one copy to the Prothonotary of Beaver County to be kept for public inspection and copying.

By the Court

ROBERT E. KUNSELMAN,  
President Judge

#### Rule L3101—Landlord Tenant Related Wage Attachments

(1) Landlord Tenant wage attachments permitted under 42 Pa.C.S. § 8127 shall be initiated with the Prothonotary only by filing a Praecipe for Writ of Execution Naming Judgment Debtor's Employer as Garnishee in a form approved and adopted hereunder.

(2) A Praecipe for a Writ of Execution Naming Judgment Debtor's Employer as Garnishee filed hereunder shall conform strictly to the form contained in Rule L3101.1. Such Praecipos shall contain (a) the name and last known address of the defendant whose wages are to be attached, (b) the name and address of the employer who is to receive the wage attachment, and (c) the name, address, and phone number of the plaintiff. The Protho-

notary shall not accept for filing any Praecipe for a Writ of Execution Naming Judgment Debtor's Employer as Garnishee that deviates from the form approved and adopted hereunder or which fails to set forth the information required therein.

(3) When filing a Praecipe under this rule, the filer will present the Prothonotary with a self-addressed and stamped envelope for returning the a Writ of Execution Naming Judgment Debtor's Employer as Garnishee to the filer.

(4) A Praecipe for a Writ of Execution Naming Judgment Debtor's Employer as Garnishee filed with the Prothonotary hereunder shall be accompanied by a certified copy of the Transcript of the Judgment entered by the District Justice or a certified copy of the Judgment entered by Court of Common Pleas or equivalent court of another jurisdiction. No such Praecipe shall be presented to or be accepted by the Prothonotary until the Judgment is final by operation of law or otherwise.

(5) Writs of Execution Naming Judgment Debtor's Employer as Garnishee issued by the Prothonotary hereunder shall conform strictly to the form set forth in Rule L3244.2.

(6) Service of Writs of Execution Naming Judgment Debtor's Employer as Garnishee shall be made by the Sheriff in accordance with Pa.R.C.P. Rule 3108 or any Rule or Rules of Civil Procedure that are promulgated to replace Rule 3108.

#### Rule L3101.1—Landlord Tenant Related Wage Attachments—Form of Praecipe

The Praecipe for Writ of Execution Naming Judgment Debtor's Employer as Garnishee to be issued pursuant to Rule L3101 shall conform strictly to the following form or such other form as may be promulgated by the Supreme Court of Pennsylvania:

#### CAPTION

#### PRAECIPE FOR WRIT OF EXECUTION NAMING JUDGMENT DEBTOR'S EMPLOYER AS GARNISHEE—LANDLORD TENANT MATTER 42 Pa.C.S. § 8127—RESIDENTIAL LEASE

To the Prothonotary of Beaver County:

Issue a Writ of Execution Naming the Judgment Debtor's Employer as Garnishee to attach the wages of the Defendant, \_\_\_\_\_, who resides at \_\_\_\_\_ . Direct the Writ to Defendant's employer, \_\_\_\_\_, at \_\_\_\_\_ in the total amount of \$ \_\_\_\_\_; this claimed amount arises out of physical damages and/or rent due for a residential lease between the Plaintiff and the Defendant for that leasehold premises located at \_\_\_\_\_. I certify that the judgment in this case upon which this Praecipe relies is final and has not been appealed. Documentary proof of the said final judgment is attached hereto. I further certify that the requested wage attachment is only to recover for physical damages to a residential leasehold and/or rent due on a residential lease.

Dated: \_\_\_\_\_ Respectfully Submitted,

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

(Name, address, & phone number)

**Rule L3101.2—Landlord Tenant Related Wage Attachments—Form of Writ**

The Writ of Execution Naming Judgment Debtor's Employer as Garnishee issued pursuant to Rule L3101 shall conform strictly to the following form or such other form as may be promulgated by the Supreme Court of Pennsylvania:

**CAPTION**

**WRIT OF EXECUTION NAMING JUDGMENT  
DEBTOR'S EMPLOYER AS GARNISHEE  
LANDLORD TENANT—42 Pa.C.S.  
§ 8127—RESIDENTIAL LEASE**

To: \_\_\_\_\_  
Name and Address of Employer

Re: \_\_\_\_\_  
Name of Employee

The above Employer shall attach and deduct from the wages of the above named Employee a sum not to exceed ten (10%) percent of the net wages per pay period of said Employee or a sum not to place Employee's net income below the poverty income guidelines as provided annually by the Federal Office of Management and Budget, whichever is less. "Net wages" shall mean all wages paid the Employee less only the following items:

- (1) Federal, state and local income taxes;
- (2) F.I.C.A. payments and non-voluntary retirement payments;
- (3) Union dues; and;
- (4) Health insurance premiums

The Total amount of income to be withheld is \$ \_\_\_\_\_.

The Employer shall send the attached wages to the Prothonotary, Beaver County Court House, Third Street, Beaver, Pennsylvania, 15009 by check payable to (Name of Plaintiff), Plaintiff-Creditor, within fifteen (15) days from the close of the last pay period in each month. The Employer shall be entitled to deduct from the wages collected from the Employee pursuant hereto the costs incurred from the extra bookkeeping necessary to implement the within Writ of Attachment, not exceeding \$5.00 of the amount of wages so deducted. If you, the Employer, are served with more than one Writ of Attachment for damages arising out of a residential lease against the same Employee, then the wage attachments shall be satisfied in the order in which said Writs of Attachment were served. Each prior wage attachment shall be satisfied before any effect is given to a subsequent attachment.

You shall not take any adverse action against the Employee solely because his wages, salaries or commissions have been attached. Violation may result in (i) your being adjudged in contempt and committed to jail or fined by the court and (ii) an action against you by the Employee for damages.

Willful failure to comply with this Writ of Attachment may result in (i) your being adjudged in contempt of court and committed to jail or fined by the court; (ii) your being held liable for any amount not withheld or withheld but not forwarded to the Prothonotary's office; and (iii) attachment of your funds or property.

This Writ of Attachment has been entered pursuant to 42 Pa.C.S.A. Section 8127. A copy of this Writ of Attach-

ment has been sent by the United States mail, postage prepaid, to the Employee's last known address at \_\_\_\_\_.

\_\_\_\_\_  
Prothonotary

\_\_\_\_\_  
Deputy Prothonotary

PLEASE DIRECT ALL INQUIRIES TO: BEAVER COUNTY PROTHONOTARY'S OFFICE, THIRD STREET, BEAVER, PA 15009—724-728-5700 EXT. 11261

SEAL

DATE: \_\_\_\_\_

[Pa.B. Doc. No. 03-1247. Filed for public inspection June 27, 2003, 9:00 a.m.]

**SCHUYLKILL COUNTY****Amended Rules of Judicial Administration; No. S-1022-2003****Order of Court**

*And Now*, this 9th day of June, 2003, at 9:30 a.m., Schuylkill County Rules of Judicial Administration, Rule 1901 is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File seven (7) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.
- 3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules.
- 4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

WILLIAM E. BALDWIN,  
*President Judge*

**Rule 1901. Termination of Inactive Cases**

(b)(1)(a) The Prothonotary shall prepare and forward to the Court on or before the third Monday of July each year, or on such other date as the Court by special order may direct, a list containing all civil matters in which no steps or proceedings have been taken for two years or more prior to the preceding June 30. The Court may initiate proceedings to terminate the cases contained on said list pursuant to Pa.R.C.P. 230.2.

[Pa.B. Doc. No. 03-1248. Filed for public inspection June 27, 2003, 9:00 a.m.]



**COMMONWEALTH COURT**

Regular Sessions of the Commonwealth Court for  
the Year 2004; No. 126 M.D. No. 3

**Order**

*And Now*, this 10th day of June, 2003, this Court's order of May 10, 2003 fixing the Calendar for the Year 2004 is amended to include a July 2004 Administrative Conference situate in Philadelphia, PA. Accordingly, the year 2004 calendar is amended as follows:

*Session*

February 2-6  
March 1-5  
March 29-April 2  
May 3-7  
June 7-11  
July 13  
(Administrative Conference)  
September 7-10  
October 4-8  
November 1-5  
December 6-10

*Situs*

Pittsburgh  
Philadelphia  
Harrisburg  
Pittsburgh  
Philadelphia  
Philadelphia  
  
Harrisburg  
Pittsburgh  
Philadelphia  
Harrisburg

JAMES GARDNER COLINS,  
*President Judge*

[Pa.B. Doc. No. 03-1249. Filed for public inspection June 27, 2003, 9:00 a.m.]

**DISCIPLINARY BOARD OF  
THE SUPREME COURT****Notice of Suspension**

Notice is hereby given that by Order of the Supreme Court of Pennsylvania issued June 11, 2003, Nicholas R. Perrella is suspended from the practice of law for a period of three months, effective July 11, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 03-1250. Filed for public inspection June 27, 2003, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 22—EDUCATION

### DEPARTMENT OF EDUCATION

#### [22 PA. CODE CH. 403]

#### Compliance with the No Child Left Behind Act of 2001

The Department of Education (Department) amends Chapter 403 (relating to compliance with the No Child Left Behind Act of 2001) to read as set forth in Annex A.

#### Contact Person

Questions regarding these standards should be directed to Myrna Delgado, Chief, Division of Student and Safe School Services, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 772-2813.

#### Effective Date

The standards will be effective upon publication in the *Pennsylvania Bulletin*.

#### Statutory Authority

The Department acts under the authority of section 2603-B(d)(10)(i) of the Public School Code of 1949 (code) (24 P. S. § 26-2603-B(d)(10)(i)), which was added by section 31 of the act of June 29, 2002 (P. L. 524, No. 88) (Act 88). Section 2603-B(d)(10)(i) of the code empowers the Department, with the approval of the State Board of Education (State Board), to adopt standards to comply with the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107-110, 115 Stat. 1425) to maintain the eligibility of the Commonwealth to receive Federal funding for education programs. Under section 2603-B(d)(10)(i) of the code, the State Board must approve or disapprove the standards within 30 days of submission to its office or at its next scheduled meeting, whichever is sooner. Failure of the State Board to approve or disapprove the standards within the time prescribed results in the standards proposed by the Department being deemed approved. Standards promulgated by the Department under section 2603-B(d)(10)(i) of the code must be deposited with the *Pennsylvania Bulletin* for publication but they are exempt from the following laws:

(a) Sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law.

(b) Section 204(b) of the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

(c) The Regulatory Review Act (71 P. S. §§ 745.1—745.15).

In light of these exemptions and the express approval of the State Board, the Department is depositing these standards for publication in final-form.

#### Description of Process

On March 19, 2003, the Department presented to the State Board several definitions that were part of two sets of draft proposed standards necessary to comply with the NCLB (standards for victims of violent crime and standards for persistently dangerous schools). On that same day, a special committee of the State Board, which was established to work with the Department in the development and review of standards necessary to comply with the NCLB, conducted a public meeting to review and

discuss the draft standards proposed by the Department and to receive public comment on the proposal.

At the regular business meeting of the State Board held March 20, 2003, the Secretary of Education made a detailed presentation explaining the Department's definitions and draft proposed standards. At its March 20, 2003 meeting, the State Board publicly voted to approve the definitions presented by the Department. On March 20, 2003, the Chairperson of the State Board signed a resolution that adopted the definitions as standards. That resolution was published at 33 Pa.B. 2838, 2841 (June 14, 2003).

On May 21, 2003, the Department presented to the State Board two sets of proposed standards necessary to comply with the NCLB. On that same day, a special committee of the State Board, which was established to work with the Department in the development and review of standards necessary to comply with the NCLB, conducted a public meeting to review and discuss the standards proposed by the Department and to receive public comment on the proposal.

At the regular business meeting of the State Board held May 22, 2003, the Secretary of Education made a detailed presentation explaining the Department's proposed standards. At its May 22, 2003 meeting, the State Board publicly voted to approve the standards presented by the Department. On May 22, 2003, the Chairperson of the State Board signed a resolution that adopted the standards. That resolution was published at 33 Pa.B. 2838, 2841.

#### Background and Need for Standards

On January 8, 2002, President George W. Bush signed the NCLB into law. The NCLB, *inter alia*, amends the Elementary and Secondary Education Act of 1965 (ESEA) (Pub. L. 89-10, 79 Stat. 27) (20 U.S.C.A. § 6301 et seq.). The purpose of the NCLB is to ensure that all children have the opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state achievement standards and academic assessments. In furtherance of this purpose, the NCLB provides grants to state education agencies and sub-grants to local education agencies (LEAs). To remain eligible for funding under the NCLB, state and LEAs must comply with the requirements of the NCLB.

Section 9532 of the NCLB (20 U.S.C.A. § 7912), requires states to establish and implement two policies: allowing a student who is a victim of a violent criminal offense to transfer to a safe public school and allowing a student who attends a persistently dangerous school to transfer to a safe public school. Both transfers are within the LEA including a charter school.

#### Description of Standards

The standards proposed by the Department and approved by the State Board establish both of the required policies.

The standards require LEAs to provide a student who is the victim of a violent criminal offense the option to transfer to another school that is a safe public school. The standards also establish definitions of "victim" and "violent criminal offense" for the LEA to use in applying the transfer option.

The standards also require the Department to identify those schools that meet the definition of "persistently

dangerous school.” After that identification takes place, LEAs with persistently dangerous schools must provide each student who attends such a school the option to transfer to another school that is a safe public school. The LEA, in conjunction with the Department, also must develop a corrective action plan that addresses the conditions in each persistently dangerous school.

*Fiscal Impact*

These standards are necessary to ensure that the State and its LEAs remain eligible to receive Federal funding under the NCLB. The standards will not result in new costs to the State because the Department will continue to use NCLB Title IV state program funds to cover the additional costs that will result from these standards. School districts may incur some costs to implement the transfer option in the case of students requiring transportation or for costs associated with students who transfer to other schools (charter schools or schools with which the LEA elects to make a tuition arrangement).

In general, any additional costs associated with the Unsafe School Choice Option for compliance with the NCLB are not expected to be major. All public school entities already report violence data annually to the Department.

If a school entity were designated as “persistently dangerous,” its administration would be required to prepare and submit a corrective action plan and implement that plan. Because it is unclear what types of steps might be identified in such a plan, it is not clear what the costs associated with their implementation might be.

In addition, there may be costs to school entities associated with students who transfer because they have been the victim of a violent crime or they attend a persistently dangerous school. Those costs should be minimal for the former category—in part because many LEAs already voluntarily offer these transfers—but could be more significant if large numbers of students elect to transfer out of schools designated as persistently dangerous (such as, transportation of students to safe schools, funds paid to charter schools or other schools under a tuition arrangement). Because the Department cannot predict how many schools will be designated as persistently dangerous or how many students will choose to transfer from schools designated as such, it is not possible to project the associated costs.

*Paper Work Requirements*

The additional paper work requirements resulting from these standards are minimal and mandated by the NCLB.

*Regulatory Review*

Under section 2603-B(d)(10)(iii) of the code, these standards are exempt from the Regulatory Review Act.

*Findings*

The Department finds that:

(1) Proposed rulemaking in advance of the promulgation of standards is not required under section 2603-B(d)(10)(iii)(A) of the code, added by section 31 of Act 88, which expressly provides that the standards are exempt from the requirements of sections 201—205 of the Commonwealth Documents Law.

(2) The State Board approved the proposed standards by public vote at its meetings on March 20, 2003, and May 22, 2003.

(3) The promulgation of these standards is necessary for compliance with the NCLB.

*Order*

The Department, acting under the authorizing statute, orders that:

(a) The standards of the Department, 22 Pa. Code Part XVI, are amended by amending § 403.2 and by adding § 403.6 to read as set forth in Annex A.

(b) The Secretary of Education will certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) The order shall take effect upon publication in the *Pennsylvania Bulletin*.

VICKI L. PHILLIPS, Ed.D.,  
*Secretary*

**Fiscal Note:** 6-288. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 22. EDUCATION**

**PART XVI. STANDARDS**

**CHAPTER 403. COMPLIANCE WITH THE NO CHILD LEFT BEHIND ACT OF 2001**

**§ 403.2. Definitions.**

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

*AYP*—Adequate yearly progress as defined by section 1111(b)(2)(C) of Title I (20 U.S.C.A. § 6311(b)(2)(C)), added by NCLB.

*Associate's degree*—Associate's degree as described in § 31.21(b)(1) (relating to curricula).

*Core academic subjects*—Core academic subjects as defined by section 9101(11) of the ESEA (20 U.S.C.A. § 7801(11) (relating to definitions)), as amended by the NCLB.

*Dangerous incident*—A weapons possession incident resulting in arrest (guns, knives or other weapons) or a violent incident resulting in arrest (homicide, kidnapping, robbery, sexual offenses and assault) as reported on the Violence and Weapons Possession Report (PDE-360).

*Department*—The Department of Education of the Commonwealth.

*ESEA*—The Elementary and Secondary Education Act of 1965 (20 U.S.C.A. §§ 6301—7941), as amended by the NCLB.

*Highly qualified elementary teacher*—Highly qualified elementary teacher as defined by section 9101(23) of the ESEA (20 U.S.C.A. § 7801(23)), as amended by the NCLB.

*Highly qualified middle or secondary teacher*—Highly qualified middle or secondary teacher as defined by section 9101(23) of the ESEA as amended by the NCLB.

*Institution of higher education*—Institution of higher education as defined by section 9101(24) of the ESEA.

*LEA*—A local educational agency.

*NCLB*—The No Child Left Behind Act of 2001 (Pub. L. No. 107—110, 115 Stat. 1425) (20 U.S.C.A. §§ 6053e, 6054b, 6055h, 6056a, 1041—1044, 3427 and 6052).

*PSSA*—The Pennsylvania System of State Assessment.

*Persistently dangerous school*—A public elementary, secondary or charter school that meets one of the following

criteria in the most recent school year and in 1 additional year of the 2 years prior to the most recent school year:

(i) For a school whose enrollment is 250 or less, at least five dangerous incidents.

(ii) For a school whose enrollment is 251 to 1,000, a number of dangerous incidents that represents at least 2% of the school's enrollment.

(iii) For a school whose enrollment is over 1,000, 20 or more dangerous incidents.

*Public School Code*—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

*Safe public school*—A public school that has not been designated as a persistently dangerous school under this chapter or that has had that designation removed by the Department.

*State Board*—The State Board of Education of the Commonwealth.

*Title I*—Title I of the ESEA (20 U.S.C.A. §§ 6301—6578), as amended by the NCLB.

*Two years of study at an institution of higher education*—Completion of 48 credits at an institution of higher education.

*Victim or student victim*—The student against whom a violent criminal offense has been perpetrated while the student was in or on the grounds of the public elementary or secondary school that the student attends.

*Violent criminal offense*—Any of the following offenses that are set forth in 18 Pa.C.S. (relating to Crimes Code):

- (i) Kidnapping.
- (ii) Robbery.
- (iii) Aggravated assault (on the student).
- (iv) Rape.
- (v) Involuntary deviate sexual intercourse.
- (vi) Sexual assault.
- (vii) Aggravated indecent assault.
- (viii) Indecent assault.

(ix) Attempt to commit any of the following: homicide, murder or voluntary manslaughter.

**§ 403.6. Unsafe school choice option.**

(a) *Requirement of the NCLB.* The Department adopts these standards as required by the Unsafe School Choice Option provision of section 9532 of the NCLB (Section 9532) (20 U.S.C.A. § 7912).

(b) *Definition.* For purposes of this section, "local educational agency" or "LEA" means a school district, an area vocational-technical school, an intermediate unit or a charter school.

(c) *Student opportunity to transfer.*

(1) *Victim of a violent criminal offense.*

(i) Except as provided as follows, a student who becomes a victim of a violent criminal offense while in or on the grounds of the public elementary or secondary school that the student attends, shall be offered the opportunity to transfer to a safe public school within the LEA, including a charter school.

(ii) For a student victim to be entitled to transfer to another school under this chapter, the violent criminal

offense first must be reported to law enforcement authorities by the student, the student's parent or guardian, or school officials.

(iii) A student victim (or the student's parent or guardian) may apply to the LEA to transfer to another school within 30 calendar days after the incident is reported to school authorities.

(2) *Student who attends a persistently dangerous school.*

(i) Except as provided as follows, a student who attends a persistently dangerous school shall be offered the opportunity to transfer to a safe public school within the LEA, including a charter school.

(ii) A student who attends a persistently dangerous school may apply to transfer at any time while the school maintains that designation.

(d) *Responsibilities of LEAs.*

(1) *Toward victims of violent criminal offenses.*

(i) Within 10 calendar days of receiving notice of the violent criminal offense, the LEA shall notify the student victim that the student has the right to transfer to a safe public elementary or secondary school within the LEA, including a public charter school.

(ii) The notification and offer to transfer shall state that no student is required to transfer to another school.

(iii) Upon receipt of an application to transfer, the LEA shall transfer the student as soon as possible, and shall transfer the student within 10 calendar days after receiving the application.

(iv) When considering a student's request to transfer to another school, the LEA shall take into account the particular needs of the student and the parent.

(v) To the extent possible, the LEA shall allow the student to transfer to a school that is making adequate yearly progress, and one that is not identified as being in school improvement, corrective action or restructuring.

(vi) A charter school only has to accept a student who meets its admission criteria if space is available.

(vii) If there is not another safe school within the LEA to which students may transfer, the LEA is encouraged, but not required, to establish an agreement with a neighboring LEA to accept the transfer of students.

(2) *Toward students who attend a persistently dangerous school.*

(i) Under the act of June 30, 1995 (P. L. 220, No. 26) know as the Pennsylvania's Safe Schools Act, all school entities as defined by the act shall report to the Department incidents involving acts of violence; possession of a weapon; or the possession, use, or sale of a controlled substance, alcohol or tobacco by any person on school property or at school-sponsored events or on school transportation to and from school or school-sponsored activities.

(ii) Within 10 school days of receiving notification by the Department, an LEA shall notify the parent or legal guardian of each student who attends the school that the Department has identified the school as persistently dangerous.

(iii) The LEA shall offer the students who attend the school the opportunity to transfer to a safe public school, including a charter school, within the LEA.

(iv) The notification and offer to transfer shall state that no student is required to transfer to another school.

(v) Upon receipt of an application to transfer, the LEA shall transfer the student within 30 calendar days.

(vi) When considering a student's request to transfer to another school, the LEA shall take into account the particular needs of the student and the parent.

(vii) To the extent possible, the LEA shall allow the student to transfer to a school that is making adequate yearly progress, and one that is not identified as being in school improvement, corrective action or restructuring.

(viii) A charter school only has to accept a student who meets its admission criteria if space is available.

(ix) If there is not another safe school within the LEA to which students may transfer, the LEA is encouraged, but not required, to establish an agreement with a neighboring LEA to accept the transfer of students.

(x) The LEA shall submit a corrective action plan to the Department within 30 calendar days of receiving notification that a school has been identified as persistently dangerous.

(xi) The LEA shall receive approval from the Department for its corrective action plan and shall implement all steps contained in its corrective action plan within the time periods specified in that plan.

(xii) After the Department has notified an LEA that a school is no longer identified as a persistently dangerous school, the LEA is encouraged to permit students who transferred to complete their education at their new school. LEAs may not require students to return to their original school if the students are enrolled in a charter school.

(e) *Responsibilities of Department.*

(1) The Department will identify those schools that meet or exceed the criteria for a persistently dangerous school by analyzing the Annual Report on School Violence and Weapons Possession (PDE-360). In identifying persistently dangerous schools, the Department will use the most recent data available to it from the reporting LEA, and will take all reasonable steps to verify that the data is valid and reliable.

(2) After review and verification of PDE-360 data, the Department will promptly inform an LEA when any of its schools meets the definition of persistently dangerous school.

(3) The Department will provide technical assistance to the LEA in developing a corrective action plan. The Department will review proposed corrective action plans submitted by LEAs and approve suitable corrective action plans.

(4) After approval of the corrective action plan, the Department will conduct a site visit to each persistently dangerous school to assess the school's progress in implementing the plan. If no significant improvement is observed, the Department may require the LEA to submit a revised corrective action plan for that school.

(5) The Department will reassess a school's designation as persistently dangerous at the end of the school year during which its corrective action plan is completed.

(6) During the reassessment described in this section, the Department will remove the designation if the school no longer meets the definition of persistently dangerous school.

[Pa.B. Doc. No. 03-1251. Filed for public inspection June 27, 2003, 9:00 a.m.]

# STATEMENTS OF POLICY

## Title 4—ADMINISTRATION

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the Liquor Control Board

The Executive Board approved a reorganization of the Liquor Control Board effective June 12, 2003.

The organization chart at 33 Pa.B. 2985 (June 28, 2003) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 03-1252. Filed for public inspection June 27, 2003, 9:00 a.m.]

### PART II. EXECUTIVE BOARD

#### [4 PA. CODE CH. 9]

#### Reorganization of the Pennsylvania State Police

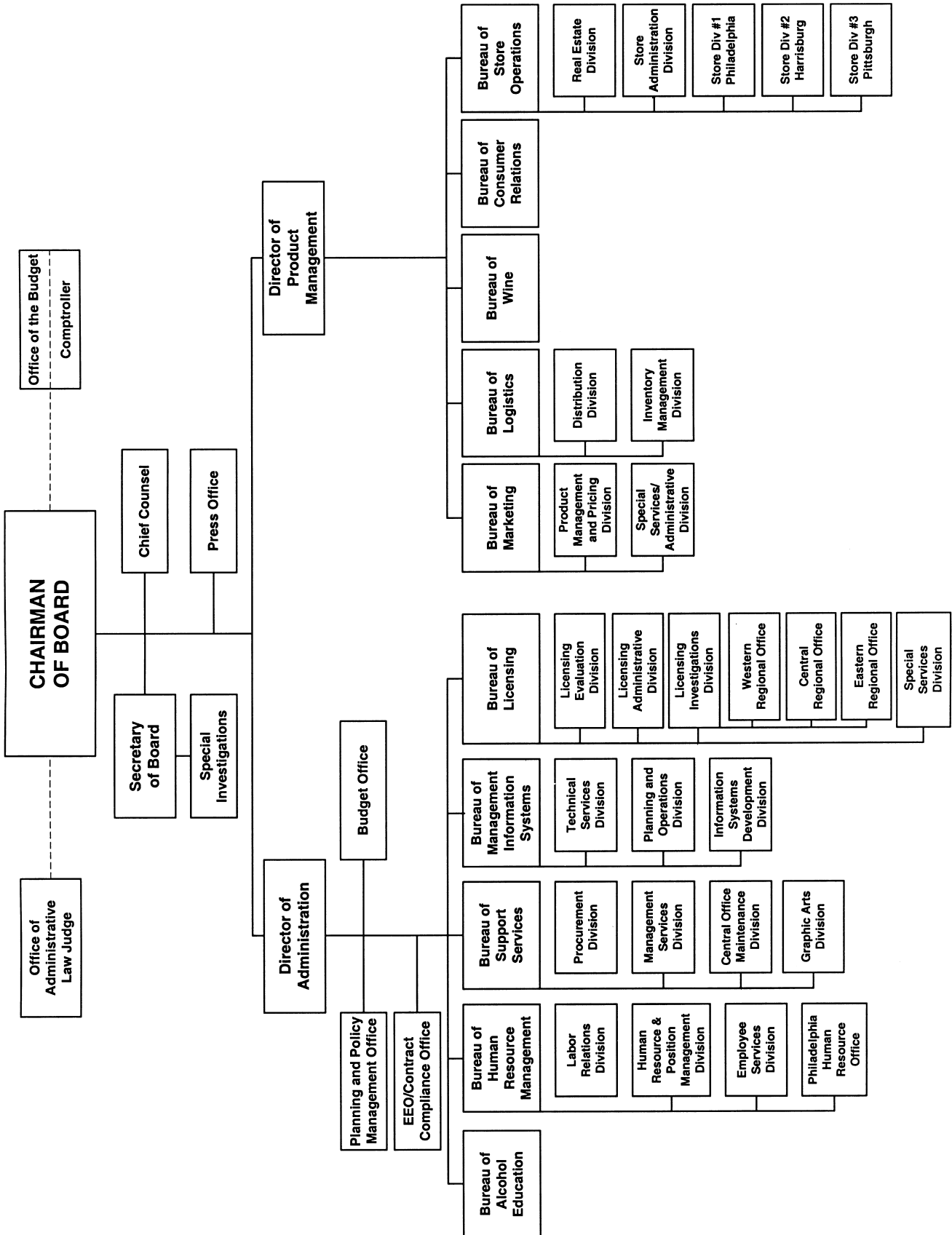
The Executive Board approved a reorganization of the Pennsylvania State Police effective June 6, 2003.

The organization chart at 33 Pa.B. 2986 (June 28, 2003) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

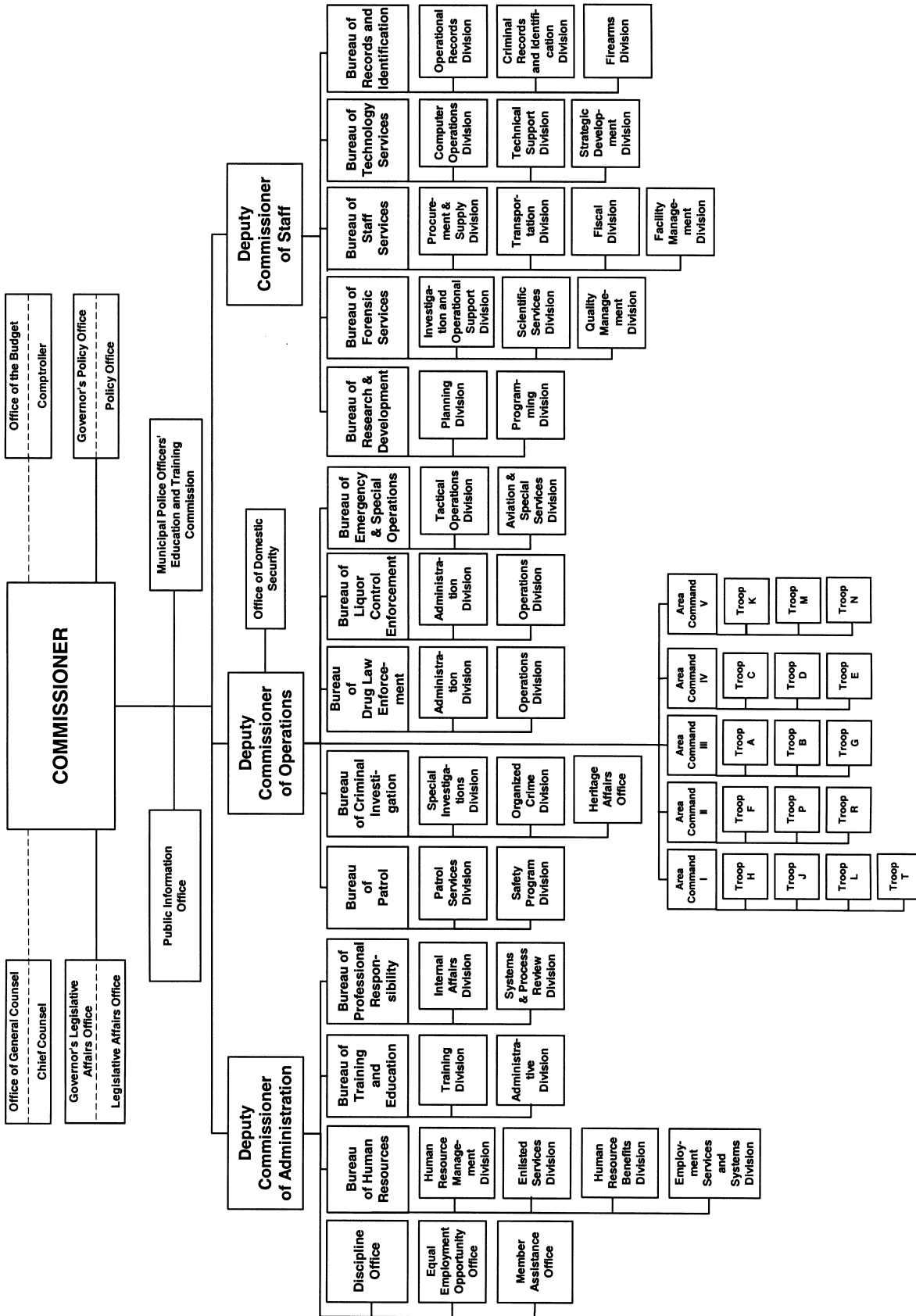
*(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)*

[Pa.B. Doc. No. 03-1253. Filed for public inspection June 27, 2003, 9:00 a.m.]

LIQUOR CONTROL BOARD



PENNSYLVANIA STATE POLICE





# NOTICES

## DEPARTMENT OF AGRICULTURE

### Fertilizer Nutrient Values

The Secretary of Agriculture, under the authority of 3 Pa.C.S. § 6710 (relating to commercial value), establishes the commercial values per pound of nitrogen, available phosphate and soluble potash.

The values are established as follows:

Nitrogen	28¢ per pound
Available phosphate	26¢ per pound
Soluble potash	15¢ per pound

### Further Information

Further information is available by contacting John W. Breitsman, Program Specialist, Division of Agronomic and Regional Services, Bureau of Plant Industry, Department of Agriculture, 2301 N. Cameron Street, Harrisburg, PA 17110-9408, (717) 787-4843.

### Effective Date

These commercial values are effective July 1, 2003, and shall remain effective until further notice.

DENNIS C. WOLFF,  
*Secretary*

[Pa.B. Doc. No. 03-1254. Filed for public inspection June 27, 2003, 9:00 a.m.]

## 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 June 17, 2003.

### BANKING INSTITUTIONS

#### Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-12-03	Gateway Bank of Pennsylvania McMurray Washington County	McMurray	Approved

#### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-11-03	East Penn Bank, Emmaus, and East Penn Interim Bank, Emmaus Surviving Institution— East Penn Bank, Emmaus	Emmaus	Approved

Merger will be effected solely to facilitate the acquisition of East Penn Bank by East Penn Financial Corporation, a new bank holding company in organization.

#### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
5-20-03	Leesport Bank Wyomissing Berks County	810 McNair St. Hazleton Luzerne County	Authorization Recinded
6-11-03	Abington Savings Bank Jenkintown Montgomery County	Ann's Choice Retirement Community 235 East Street Road Warminster Bucks County (Limited Service Facility)	Approved
6-12-03	Embassy Bank for the Lehigh Valley Bethlehem Northampton County	4140 Tilghman St. Allentown Lehigh County	Approved
6-13-03	Sun Bank Lewisburg Union County	2134 Sandy Drive State College Centre County	Filed

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-13-03	First Savings Bank of Perkasio Perkasie Bucks County	Quakertown Commons Rte. 309 and Tollgate Rd. Richland Township Bucks County	Filed
6-16-03	Beneficial Mutual Savings Bank Philadelphia Philadelphia County	701 W. Germantown Pike East Norriton Montgomery County	Filed

**Branch Relocations**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-13-03	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> 4335 Clairton Blvd. Pittsburgh Allegheny County  <i>From:</i> 4110 Brownsville Road Pittsburgh Allegheny County	Filed
6-13-03	Patriot Bank Pottstown Montgomery County	<i>To:</i> 3559 Bath Pike Bethlehem Northampton County  <i>From:</i> 3650 Nazareth Pike Bethlehem Northampton County	Filed

**Branch Discontinuances**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-13-03	Lebanon Valley Farmers Bank Lebanon Lebanon County	Lebanon Plaza Mall 1205 Quentin Road Lebanon Lebanon County	Filed
6-13-03	First Commonwealth Bank Indiana Indiana County	Route 66 North Leechburg Armstrong County	Filed
6-13-03	First Commonwealth Bank Indiana Indiana County	52 Main Street Falls Creek Jefferson County	Filed
6-13-03	First Commonwealth Bank Indiana Indiana County	719 Bedford Street Johnstown Cambria County	Filed

**SAVINGS INSTITUTIONS**

No activity.

**CREDIT UNIONS**

No activity.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 03-1255. Filed for public inspection June 27, 2003, 9:00 a.m.]

**Maximum Lawful Rate of Interest for Residential Mortgages for the Month of July 2003**

The Department of Banking (Department), under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), hereby determines that the maximum lawful rate of interest for residential mortgages for the month of July 2003 is 6 1/2%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law,

the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. No. 96-221). Further preemption was instituted with the signing of Pub. L. No. 96-399, which overrode State interest rate limitations on any individual who finances the sale or exchange of residential real property which the individual owns and which the individual occupies or has occupied as a principal residence.

Each month the Department is required by State law to compute and announce the ceiling rate on residential mortgages in this Commonwealth. This maximum rate is

determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 4.04 to which was added 2.50 percentage points for a total of 6.54 that by law is rounded off to the nearest quarter at 6 1/2%.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 03-1256. Filed for public inspection June 27, 2003, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Chester County Watersheds Integrated Water Resources Plan

The Department of Conservation and Natural Resources (Department), Bureau of Recreation and Conservation has approved Watersheds: An Integrated Water Resources Plan for Chester County and its Watersheds (Plan) and is placing all watersheds within the boundaries of Chester County on the Pennsylvania Rivers Conservation Registry (Registry).

The Chester County Water Resources Authority on behalf of Chester County submitted the Plan and other required information to gain Registry status.

After review of the Plan and other information, the Department has determined that the Pennsylvania Rivers Conservation Program (Program) requirements have been satisfied and places the following on the Registry:

1. All watersheds within the boundaries of Chester County—780 square miles.

This action becomes effective June 28, 2003. Projects identified in the Plan become eligible for implementation, development or acquisition grant funding through the Program.

A copy of the Plan is available for review at the Chester County Water Resources Authority, 601 Westtown Road, Suite 270, P. O. Box 2747, West Chester, PA 19380-0990, (610) 344-5400 and at the Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market Street, 6th Floor, Harrisburg, PA 17101, (717) 787-7672.

Maps and supporting data are on file at the Chester County Water Resources Authority.

MICHAEL F. DIBERARDINIS,  
*Secretary*

[Pa.B. Doc. No. 03-1257. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Snowmobile and ATV Advisory Committee Meeting

The Snowmobile and ATV Advisory Committee of the Department of Conservation and Natural Resources (Department) will hold a meeting on Tuesday, July 8, 2003, at 9:30 a.m. in Room 105, First Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items should be directed to Cindy Dunn at (717) 772-9101.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Cindy Dunn at (717) 772-9101 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

MICHAEL F. DIBERARDINIS,  
*Secretary*

[Pa.B. Doc. No. 03-1258. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Upper Perkiomen Watershed Conservation Plan

The Department of Conservation and Natural Resources (Department), Bureau of Recreation and Conservation has approved the Upper Perkiomen Watershed Conservation Plan (Plan) and is placing a portion of the Upper Perkiomen Creek Watershed in Berks, Bucks, Lehigh and Montgomery Counties on the Pennsylvania Rivers Conservation Registry (Registry).

The Pennsylvania Environmental Council has submitted the Plan and other required information to gain Registry status.

After review of the Plan and other information, the Department has determined that the Pennsylvania Rivers Conservation Program (Program) requirements have been satisfied and places the following on the Registry:

1. A portion of the Upper Perkiomen Creek Watershed from the headwaters of the Perkiomen Creek Watershed to the confluence of the mainstem of the Perkiomen Creek with the Unami Creek in Berks, Bucks, Lehigh and Montgomery Counties—144 square miles.

2. All tributary streams within the Upper Perkiomen Watershed.

This action becomes effective June 28, 2003. Projects identified in the Plan become eligible for implementation, development or acquisition grant funding through the Program.

A copy of the Plan is available for review at the Pennsylvania Environmental Council, 117 South 17th Street, Suite 2300, Philadelphia, PA 19103, (215) 563-0250 and at the Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market Street, 6th Floor, Harrisburg, PA 17101, (717) 787-7672.

Maps and supporting data are on file at the Pennsylvania Environmental Council.

MICHAEL F. DIBERARDINIS,  
*Secretary*

[Pa.B. Doc. No. 03-1259. Filed for public inspection June 27, 2003, 9:00 a.m.]

## DEPARTMENT OF EDUCATION

### Cyber Charter School Application Hearing

The Department of Education (Department) has scheduled a public hearing regarding the cyber charter school

renewal application that it received on May 19, 2003. The hearing will be held at 10 a.m. on Friday, August 1, 2003, in the Honors Suite, 1st Floor, 333 Market Street, Harrisburg, PA. The hearing pertains to the SusQ-Cyber Charter School seeking renewal of its charter to continue operation of the cyber charter school. The purpose of the hearing is to receive information from the applicant about the cyber charter school and to receive comments from interested persons regarding the renewal application. The renewal application can be viewed on the Department's website at [www.pde.state.pa.us](http://www.pde.state.pa.us).

The charter applicant will have 30 minutes to present information about the cyber charter school. Individuals who wish to provide comments at the hearing must send the Department and the applicant a copy of the comments by July 18, 2003. Failure to comply with this deadline will preclude the respective individual from providing verbal comments at the hearing. Verbal comments may be limited based on the number of individuals requesting time to provide comments and may also be limited if the comments are duplicative or repetitive of other individual's comments. The hearing will be conducted by a panel of individuals who have reviewed the renewal application. The panel members may question the applicant regarding issues identified during their review, as well as issues raised in the written comments filed before the hearing

date. Panel members may also question individuals who offer verbal comments. Commentators will not be permitted to question either the applicant or the panel members.

Individuals who are unable to attend the hearing may also provide the Department and the applicant with written comments by July 28, 2003. Written comments provided to the Department by this deadline will become part of the certified record.

Comments should be sent to Betsy Becker, Bureau of Performance Accountability and Reporting, 333 Market Street, 9th Floor, Harrisburg, PA 17126.

An agenda will be prepared after July 18, 2003, when the Department is aware of the number of individuals who wish to provide verbal comments at the hearing. The agenda will provide the order of presentation, as well as specify the amount of time allotted to each commentator. Individuals wanting a copy of the agenda should contact Betsy Becker, (717) 705-0930.

VICKI L. PHILLIPS, Ed.D.,  
*Secretary*

[Pa.B. Doc. No. 03-1260. Filed for public inspection June 27, 2003, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

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#### APPLICATIONS

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#### THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

#### APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal waste; discharge into groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

For NPDES renewal applications 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 applications for new NPDES permits and renewal applications with major changes listed in Section II, as well as applications for MS4 individual permits and individual stormwater construction permits in Sections IV and VI, the

Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision at 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the contact office noted before the application, within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application 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 the respective comment periods will be considered in the final determinations regarding the applications. 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 will also accept requests for a public hearing on applications and a public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after any public hearings are held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

### I. NPDES Renewal Applications

*Southeast Region: Water Management Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0027987	Sunoco Inc. East Quaker Park Building 1001 Hector Street, 4th Floor Conshohocken, PA 19428	Chester County Wallace Township	UNT to Marsh Creek	Y

*Southcentral Region: Water Management Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0087548	Artillery Ridge Camping Resort 610 Taneytown Road Gettysburg, PA 17325	Adams County Cumberland Township	Rock Creek 13-D	Y
PA0043443	Alexandria Borough-Porter Township Joint Sewer Authority P. O. Box 113 Alexandria, PA 16611-0113	Huntingdon County Porter Township	Frankstown Branch Juniata River 11-D	Y
PA0083038	Jack and Betty Waybrant 814 East Keller Street Hernando, FL 34442	Adams County Mount Joy Township	UNT Rock Creek 13-D	Y
PA0080748	Northern Lebanon County Authority P. O. Box 434 Jonestown, PA 17038	Lebanon County Union Township	Forge Creek 7-D	Y
PA0087904	Roaring Spring Water 740 Spang Street P. O. Box 97 Roaring Spring, PA 16673	Blair County Roaring Spring Borough	11-A	Y
PA0087840	JMH, Inc. Power Packaging Plant 220 N. Park Road, Suite 400 Wyomissing, PA 19610	Berks County Muhlenberg Township	3-C	Y
PA0008427	NRG Energy Center Harrisburg, Inc. P. O. Box 3357 Harrisburg, PA 17105	Dauphin County Harrisburg City	Paxton Creek 7-C	Y

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0041491	Berks Properties, Inc. Mountain Village MHP 2620 Egypt Road Norristown, PA 19403	Berks County Longswamp Township	UNT Perkiomen Creek 3-E	Y

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>	<i>EPA Waived Y/N ?</i>
PA0200787	Patrick G. and V. Kaye Williams 390 Osborn Road Greenville, PA 16125	Salem Township Mercer County	Unnamed tributary to Sandy Creek 16G	Y
PA0221058	Kirk D. Hummer R. R. 1, Box 21 Grand Valley, PA 16420	Eldred Township Warren County	Unnamed tributary to Caldwell Creek 16E	Y

## II. Applications for New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Applications

*Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**PA0058483**, Industrial Waste, **Philadelphia Authority for Industrial Development (PAID)**, 1413 Langley Avenue, Quarters A, Philadelphia Naval Business Center, Philadelphia, PA 19112. This application is for issuance of an NPDES permit to discharge cooling water from the Power Plant (Building 23) at the Philadelphia Naval Business Center in the City of Philadelphia, **Philadelphia County**. This is an existing discharge to Delaware Estuary Zone 4.

The receiving stream is classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 008, based on an average flow of 29 MGD are as follows:

<i>Parameter</i>	<i>Average Monthly</i>	<i>Instantaneous Maximum</i>	<i>Measurement Frequency</i>
Flow	Monitor and Report		once/week
Temperature (intake)	Monitor and Report		once/week
pH	within limits of 6.0—9.0 standard units at all times		once/week
Temperature (discharge)	Monitor and Report	110°F	once/week

The EPA waiver is not in effect.

**PA0036447**, Industrial Waste, **Naval Surface Warfare Center—Carderock Division**, Philadelphia Naval Business Center. This application is for an amendment of an NPDES permit to discharge cooling water from the Philadelphia Naval Shipyard in the City of Philadelphia, **Philadelphia County**. This is an existing discharge to Delaware Estuary Zone 4.

The receiving stream is classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001, based on an average flow of 25 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	Monitor and Report		
Temperature			110°F
pH	within limits of 6.0—9.0 standard units at all times		

The proposed effluent limits for Outfall 005, based on an average flow of 0.002 mgd are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	Monitor and Report		
Temperature			110°F
pH	within limits of 6.0—9.0 standard units at all times		

Other Conditions: thermal requirements.

The EPA waiver is in effect.

**PA0024058**, Sewage, **Borough of Kennett Square**, 120 North Broad Street, Kennett Square, PA 19348-2942. This application is for renewal of an NPDES permit to discharge treated sewage from a sewage treatment plant in Kennett Township, **Chester County**. This is an existing discharge to West Branch Red Clay Creek.

The following notice reflects changes to the notices published at 32 Pa.B. 1418 (March 16, 2002) and 32 Pa.B. 5292 (October 26, 2002): based on additional sampling data, the parameter Pentachlorophenol is removed. Three years of compliance time is provided to meet limits for Phenols, total.

The proposed effluent limits for Outfall 001 for the period beginning at the 3rd year of the permit through permit expiration, based on an average annual flow of 1.1 million gallons per day are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	17	25	33
(11-1 to 4-30)	25	40	50
Suspended Solids	30	45	60
Ammonia (as N)			
(5-1 to 10-31)	2.0		4.0
(11-1 to 4-30)	6.0		12.0
Phosphorus (as P)			
(4-1 to 10-31)	1.3		2.6
Fecal Coliform	200 colonies/100 ml as a generic average		
Dissolved Oxygen	minimum of 6.0 mg/l at all times		
pH	when limits of 6.0—9.0 standard units at all times		

The proposed effluent limits for Outfall 001 for toxic pollutants, based on an average annual flow of 1.1 million gallons per day are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Lindane	Monitor	Monitor	Monitor
Phenols, Total			
(1st Year to 3rd Year)	0.045	0.090	0.112
(4th Year to Expiration)	0.023	0.046	0.058
Toxicity (TUC)		2.23	
Total Residual Chlorine	0.2		0.7

The proposed effluent limits for Outfall 002, based on stormwater discharge from the area around the sewage treatment plant property are as follows:

<i>Parameter</i>	<i>Average Annual (mg/l)</i>
CBOD <sub>5</sub>	Monitor
COD	Monitor
Oil and Grease	Monitor
pH	Monitor
Suspended Solids	Monitor
Total Kjeldahl Nitrogen	Monitor
Total Phosphorus	Monitor
Dissolved Iron	Monitor

Implementation of industrial pretreatment program requirements; a maximum monthly flow of 1.4 million gallons per day as rated hydraulic capacity of the plant; special test methods for Lindane and Phenols, total; toxicity identification evaluation to reduce or eliminate the effluent toxicity; implementation of a corrective action plan in accordance with a consent decree; requirements for stormwater discharge; laboratory certification; and development of an operations and maintenance plan.

The EPA waiver is not in effect.

**PA0021181**, Sewage, **Bucks County Water and Sewer Authority**, 1275 Almshouse Road, Warrington, PA 18976. This application is for an amendment of an NPDES permit to discharge stormwater runoff from the Green Street Wastewater Plant in Doylestown Borough, **Bucks County**. This is an existing discharge to an unnamed tributary to Neshaminy Creek.

The receiving stream is classified for WWF, aquatic life, water supply and recreation.

The effluent limitations for Stormwater Outfalls 003 and 004 are based on the Department's general permit for discharges of stormwater from industrial activities (PAG-3), Appendix J (other facilities) and are as follows:

<i>Parameter</i>	<i>Average Monthly</i>	<i>Monitoring Frequency</i>
CBOD <sub>5</sub>	Monitor and Report	twice/year
COD	Monitor and Report	twice/year
Oil and Grease	Monitor and Report	twice/year
pH (standard units)	between 6—9	twice/year
Total Suspended Solids	Monitor and Report	twice/year
Total Kjeldahl Nitrogen	Monitor and Report	twice/year
Total Phosphorus	Monitor and Report	twice/year

<i>Parameter</i>	<i>Average Monthly</i>	<i>Monitoring Frequency</i>
Iron (Dissolved)	Monitor and Report	twice/year
Fecal Coliform	Monitor and Report	twice/year

The EPA waiver is not in effect.

**PA0026085**, Sewage, **Upper Merion Municipal Utility Authority**, 175 West Valley Forge Road, King of Prussia, PA 19406. This application is for amendment of an NPDES permit to discharge treated sewage or stormwater from the treatment plant in Upper Merion Township, **Montgomery County**. This is existing discharge to Frog Run.

The receiving stream is classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 002, based on an average flow of 5.5 MGD are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	18	27	36
(5-1 to 10-31)	25	38	50
(11-1 to 4-30)	30	45	60
Suspended Solids	6.0		12.0
Ammonia (as N)			
(5-1 to 10-31)	6.0		12.0
(11-1 to 4-30)	18.0		36.0
Total Residual Chlorine	0.5		1.2
Fecal Coliform		200 colonies/100 ml as a geometric average	
Dissolved Oxygen		minimum of 2.0 mg/l at all times	
pH		within limits of 6.0—9.0 standard units at all times	

Proposed effluent limits for stormwater Outfall 003 are as follows:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			Monitor and Report
COD			Monitor and Report
Oil And Grease			Monitor and Report
pH			Monitor and Report
Total Suspended Solids			Monitor and Report
Total Kjeldahl Nitrogen			Monitor and Report
Total Phosphorus			Monitor and Report
Iron (Dissolved)			Monitor and Report

The EPA waiver is not in effect.

**PA0026689, PA0026662 and PA0026671**, Sewage, **City of Philadelphia Water Department**, 1101 Market Street, 4th Floor, Philadelphia, PA 19107. The Department is amending these NPDES permits to discharge treated sewage from Northeast, Southeast and Southwest Water Pollution Control Plants in Philadelphia, PA. These are existing discharges to Delaware River Zones 3 and 4.

The receiving stream is classified for WWF, aquatic life, water supply and recreation.

The amendments to the three water pollution control plants adjust the total residual chlorine (TRC) limitation from 0.2 to 0.5 mg/l as a monthly average and an instantaneous maximum of 1.0 mg/l TRC. This change is the result of chlorine minimalization study conducted by the Philadelphia Water Department.

The EPA waiver is in effect.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

**PA0023744**, Sewage, **Northeastern York County Sewer Authority**, 175 Chestnut Street, P. O. Box 516, Mount Wolf, PA 17347. This facility is in East Manchester Township, **York County**.

Description of Activity: Renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving water, Susquehanna River, is in Watershed 7-F and classified for WWF, water supply recreation and fish consumption. The nearest downstream public water supply intake for Wrightsville Water Supply Co. is on the Susquehanna River, approximately 10 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 based on an annual average flow rate of 1.7 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	XXX	50
Total Suspended Solids	30	45	XXX	60
NH <sub>3</sub> -N (Interim)	Monitor and Report			



<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	XXX	50
NH <sub>3</sub> -N (Final)	12			24
(5-1 to 10-31)				
(11-1 to 4-30)	Monitor and Report			
Total Phosphorus	2.0			4.0
Total Residual Chlorine	0.4		Monitor and Report	1.3
Total Nitrogen			Monitor and Report	
Oil and Grease			Monitor and Report	
Total Copper			Monitor and Report	
Total Aluminum			Monitor and Report	
Total Mercury			Monitor and Report	
Acute Toxicity (TUa)				1.0
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)		10,000/100 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 not in effect.

**PA0026051**, Sewage, **Borough of Chambersburg**, 100 South Second Street, Chambersburg, PA 17201. This facility is in Chambersburg Borough, **Franklin County**.

Description of Activity: Amendment of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Conococheague Creek, is in Watershed 13-C and classified for WWF, water supply recreation and fish consumption. The nearest downstream public water supply intake for Hagerstown, MD is on the Potomac River, approximately 43 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 6.8 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	15	22	30
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	3.5		7
(11-1 to 4-30)	10		20
Total Phosphorus	Monitor and Report		Monitor and Report
Total N	Monitor and Report		Monitor and Report
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)	4,500/100 ml as a geometric average		
(10-1 to 4-30)			

Whole effluent toxicity test requirements were removed from the permit. No further testing is necessary until permit renewal.

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.

**PA0088595, Amendment No. 1**, CAFO, **Hostetter Management Company (Wide Awake Farm)**, P. O. Box 526, Ephrata, PA 17522. Joe Gulick has submitted a permit amendment application for an individual NPDES permit for an expanding CAFO known as Wide Awake Farm, 488 Jay Road, Monroe Township, **Bedford County**.

The CAFO is situated near West Branch Sideling Hill Creek in Watershed 13-B (EV). The CAFO will be designed to maintain an animal population of approximately 1,360.6 AEU's consisting of 336 sows with litter, 2,800 gestating sows, 15 boars, 320 nursery pigs and 450 finishing pigs. The animals will be housed in two existing animal husbandry buildings and two proposed animal husbandry buildings and also an existing isolation building. Manure will be collected beneath the slatted floors of the animal husbandry buildings and conveyed by gravity to the one existing and one proposed HDPE-lined manure storage facilities. In addition, the manure from the isolation building is stored beneath the building in a concrete storage pit. The capacity of the manure storage facilities is as follows: existing HDPE-lined lagoon (3.29 million gallons), existing isolation building pit (0.0308 gallon) and proposed HDPE-lined lagoon (2.3 million gallons). A Water Quality Management Part II application was submitted to the Department for the proposed HDPE-lined lagoon.

Prior to operation of the proposed manure storage facilities, the design engineer will be required to submit certification that the facilities were constructed in accordance with appropriate Pennsylvania Technical Guide Standards. A release or discharge to waters of this Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

The Department has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to issue an NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit.

The permit application and draft permit are on file at the Southcentral Regional Office of the Department. Individuals may make an appointment to review the files by calling the File Review Coordinator at (717) 705-4732.

Persons wishing to comment on the proposed permit are invited to submit written comments to the previous address within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in formulating the Department's final determination regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the basis of the comment and the relevant facts upon which it is based.

Following the 30-day comment period, the Water Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time the determination may be appealed to the Environmental Hearing Board.

The EPA permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

**PA0247073**, Sewage, **Hopewell Township Supervisors (Sunnyside Wastewater Treatment Plant)**, 2759 Raystown Road, Hopewell, PA 16650. This facility is in Hopewell Township, **Bedford County**.

Description of Activity: Issuance of an NPDES permit for a new discharge of treated sewage.

The receiving stream, Raystown Branch Juniata River, is in Watershed 11-D and classified for TSF, water supply recreation and fish consumption. The nearest downstream public water supply intake for the Saxton Municipal Water Authority is on the Raystown Branch Juniata River, approximately 8 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.021 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Suspended Solids	30	45	60
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.

**PA0247081**, Sewage, **Hopewell Township Supervisors (Pipers Run Wastewater Treatment Plant)**, 2759 Raystown Road, Hopewell, PA 16650. This facility is in Hopewell Township, **Bedford County**.

Description of Activity: Issuance of an NPDES permit for new discharge of treated sewage.

The receiving stream, Pipers Run, is in Watershed 11-D and classified for WWF, water supply recreation and fish consumption. The nearest downstream public water supply intake for the Saxton Municipal Water Authority is on the Raystown Branch Juniata River, approximately 16 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.105 MGD are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10	15	20
Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	3.5		7.0
(11-1 to 4-30)	10.5		21.0
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)	3,700/100 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: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**PA0020273**, SIC 4952, **Milton Municipal Authority**, P. O. Box 150, Milton, PA 17847. This proposed action is for amendment of an NPDES permit to include discharge of site stormwater through Outfall S01. The existing limits for discharge of treated sewage through Outfall 001 remain unchanged. Discharge is to the West Branch Susquehanna River in West Chillisquaque Township, **Northumberland County**.

The receiving stream is in the Muncy watershed (10-D) and is classified for WWF and aquatic life, water supply and recreation.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride and phenolics, the downstream potable water supply considered during the evaluation is at Sunbury.

*Outfall 001:* The effluent limits, based on a design flow of 3.42 MGD, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	137	205	274
Suspended Solids	100	150	200
Total Chlorine Residual	0.5		3.0
Fecal Coliform (5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		2,000/100 ml as a geometric average	
pH		6.0—9.0 standard units at all times	

*Outfall S01:* Annual stormwater inspection and best management practices.

Other Conditions: industrial pretreatment requirements and stormwater management requirements.

The EPA waiver is not in effect.

**PA0034576**, Sewerage, SIC 4952, **Towanda Municipal Authority**, 724 Main Street, Towanda, PA 18848. This existing facility is in Towanda Borough, **Bradford County**.

Description of Proposed Activity: Amendment of an NPDES permit to expand an existing discharge of treated sewage wastewater and add stormwater best management practices.

The receiving stream, Susquehanna River, is in the State Water Plan watershed 4C and classified for WWF. The nearest downstream public water supply intake for Danville Municipal Authority is on the Susquehanna River, 133 miles below the point of discharge.

The proposed effluent limits for the expansion of Outfall 001 based on a design flow of 1.74 MGD.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40		50
TSS	30	45		60
% UV Transmittance	report daily minimum			
Fecal Coliform (5-1 to 9-30)		200 col/100 ml as a geometric mean		
(10-1 to 4-30)		2,000 col/100 ml as a geometric mean		
pH		6.0 to 9.0 at all times		

In addition to the effluent limits, the permit contains Part C 8 that requires reporting of sanitary sewer overflows and Part C 9 Stormwater Management.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**PA0219444**, Sewage, **Lorie L. Frazee, Markleysburg Borough**, P. O. Box 25, Markleysburg, PA 15456-0025. This application is for issuance of an NPDES permit to discharge treated sewage from Markleysburg Area STP in Markleysburg Borough, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Pinkham 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 Ohiopyle Borough Municipal Water Works.

Outfall 001: new discharge, design flow of 0.075 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Ammonia Nitrogen				
(5-1 to 10-31)	1.9			3.8
(11-1 to 4-30)	2.9			5.8
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	0.015			0.035
Dissolved Oxygen	not less than 5 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0252441**, Sewage, **AMFIRE Mining Company, LLC**, One Energy Place, Suite 2800, Latrobe, PA 15650. This application is for issuance of an NPDES permit to discharge treated sewage from the Ondo Mine STP in Brush Valley Township, **Indiana County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Ferrier Run via culvert under Township Road, which are classified as a CWF 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 PENELEC Homer City Station on Two Lick Creek.

Outfall 001: new discharge, design flow of 0.001925 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25			50
Suspended Solids	30			60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	10,000/100 ml as a geometric mean			
Total Residual Chlorine*	Monitor and Report			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

\* The monitoring requirement for this parameter shall be effective if chlorination is used for disinfection.

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**PA0239194**, Sewage, **Cherrytree Land Development**, 4342 SR 8, Titusville, PA 16354. This proposed facility is in Cherrytree Township, **Venango County**.

Description of Proposed Activity: New proposed discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is the Emlenton Water Company and the Allegheny River at River Mile 90, approximately 51 miles below point of discharge.

The receiving stream, unnamed tributary to Oil Creek, is classified for CWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.035 MGD.

Parameter	Concentrations		
	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow	Monitor and Report		
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
NH <sub>3</sub> -N			
(5-1 to 10-31)	2.5		5
(11-1 to 4-30)	7.5		15
Dissolved Oxygen	minimum of 5 mg/l at all times		

Parameter	Concentrations		
	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)		200/100 ml as a geometric average 3,000/100 ml as a geometric average	
Total Residual Chlorine	0.3		0.7
pH		6.0 to 9.0 standard units at all times	

The EPA waiver is in effect.

**PA0239194**, Sewage, **Cherrytree Land Development**, 4342 SR 8, Titusville, PA 16354. This proposed facility is in Cherrytree Township, **Venango County**.

Description of Proposed Activity: New proposed discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply (stream and public water supplier) considered during the evaluation is the Emlenton Water Company and the Allegheny River at River Mile 90, approximately 51 miles below point of discharge.

The receiving stream, unnamed tributary to Oil Creek, is classified for CWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.035 MGD.

Parameter	Concentrations		
	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow	Monitor and Report		
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
NH <sub>3</sub> -N (5-1 to 10-31)	2.5		5
(11-1 to 4-30)	7.5		15
Dissolved Oxygen		minimum of 5 mg/l at all times	
Fecal Coliform (5-1 to 9-30) (10-1 to 4-30)		200/100 ml as a geometric average 3,000/100 ml as a geometric average	
Total Residual Chlorine	0.3		0.7
pH		6.0 to 9.0 standard units at all times	

The EPA waiver is in effect.

### III. WQM Industrial Waste and Sewerage Applications under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

*Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**WQM Permit No. 1503412**, Sewerage, **Avondale Borough**, 110 Pomeray Avenue, P. O. Box 247, Avondale, PA 19311. This proposed facility is in Avondale Borough, **Chester County**.

Description of Proposed Action/Activity: Upgrading and expanding the existing Avondale Borough Wastewater Treatment Plant.

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**WQM Permit No. 6403401**, Sewerage, **DVS, Inc. d/b/a J & J Lounge**, P. O. Box 87, Hamlin, PA 18427. This proposed facility is in Salem Township, **Wayne County**.

Description of Proposed Action/Activity: This project consists of the construction of a small flow treatment plant with direct discharge to correct an existing malfunctioning system.

**WQM Permit No. 5403403**, Sewerage, **Pine Grove Joint Treatment Authority**, P. O. Box 426, Pine Grove, PA 17963. This proposed facility is in Pine Grove Township, **Schuylkill County**.

Description of Proposed Action/Activity: This project will consist of the construction of an interceptor pump station at the existing Pine Grove WWTP to collect existing sewage, a forcemain interceptor that will convey sewage to new Pine Grove WWTP location, a low pressure sewer system to service residents and businesses in the existing commercial area surrounding the new WWTP site, 1.5 MGD WWTP to process domestic wastewater and septage and the outfall to discharge disinfected effluent to Swatara Creek.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

**WQM Permit No. 0703403**, Sewerage, **Allegheny Township Sewer and Water Authority**, 3131 Old Sixth Avenue Road, North, Duncansville, PA 16635. This proposed facility is in Allegheny Township, **Blair County**.

Description of Proposed Action/Activity: East Burns Avenue Sanitary Sewer Extension.

**WQM Permit No. 0603405**, Sewerage, **Blue Mountain Academy**, 2363 Mountain Road, Hamburg, PA 19526. This proposed facility is in Tilden Township, **Berks County**.

Description of Proposed Action/Activity: Upgrades to existing sewage treatment system.

**WQM Permit No. 0103403**, Sewerage, **Borough of Bonneauville**, 46 East Hanover Street, Gettysburg, PA 17325. This proposed facility is in Bonneauville Borough, **Adams County**.

Description of Proposed Action/Activity: Construction of sewer extension and pumping station to serve the Clearfield Condominiums.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**WQM Permit No. 4177407-T3**, Sewerage 4952, **Scott Lewis**, 2864 Pleasant Valley Road, Cogan Station, PA 17728. This existing facility is in Hepburn Township, **Lycoming County**.

Description of Proposed Action/Activity: Application for transfer of an existing small flow sewage treatment plant to serve a single residence. The existing treatment facility discharges to an unnamed tributary to an unnamed tributary to Fisher Hollow (CWF). Transfer permit request was from Patricia McQuiston to Scott Lewis.

**WQM Permit No. 1403202**, Industrial Waste 4941, **State College Borough Water Authority**, 1201 West Branch Road, State College, PA 16801-7697. This proposed facility is in Harris Township, **Centre County**.

Description of Proposed Action/Activity: Water Quality Management Part II Permit application for construction of a discharge absorption area to accept supernatant return from the existing solids separation tank and filtrate from the existing drying bed at the State College Borough Public Water Supply Treatment Plant.

**WQM Permit No. 4903201**, Industrial Waste, SIC 2833, **Merck & Company Inc.**, P. O. Box 600, Danville, PA 17821-0600. This existing facility is in Riverside Borough, **Northumberland County**.

Description of Proposed Action/Activity: Provide pretreatment of wastewater before discharging into the industrial wastewater treatment plant.

**WQM Permit No. 4903402**, Sewerage Public, SIC 4952, **Ralpho Township Municipal Authority**, 32-A South Market Street, Elysburg, PA 17824. This existing facility is in Ralpho Township, **Northumberland County**.

Description of Proposed Action/Activity: Re-rating of the sewage plant from 0.625 MGD to 0.719 MGD annual average design flow.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**WQM Permit No. 0203402**, Sewerage, **McCandless Township Sanitary Authority**, 418 Arcadia Drive, Pittsburgh, PA 15237-5506. This proposed facility is in McCandless Township, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of a pump station to serve Malibran Drive.

**WQM Permit No. 0203403**, Sewerage, **Ohio Township Sanitary Authority**, 1719 Roosevelt Road, Pittsburgh, PA 15237. This proposed facility is in Kilbuck and Ohio Townships, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of a sanitary sewer extension to serve the Harmony-Roosevelt Roads area.

**WQM Permit No. 0203404**, Sewerage, **Salem Land Development Company**, 2500 Brooktree Road, Suite 100, Wexford, PA 15090. This proposed facility is in Pine Township, **Allegheny County**.

Description of Proposed Action/Activity: Application for the construction and operation of a sewerage pumping station to serve the Heights of North Park Phase VI.

**WQM Permit No. 6395402-A1**, Sewerage, **Mon Valley Water Pollution Control Authority**, P. O. Box 197, Allenport, PA 15412. This proposed facility is in Allenport Borough, **Washington County**.

Description of Proposed Action/Activity: Application for the modification and operation of the Mon Valley Water Pollution Control Authority sewerage treatment plant and pumping stations.

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WQM Permit No. 2003417**, Sewerage, **Michael Robel**, 11599 Sunset Drive, Conneaut Lake, PA 16316. This proposed facility is in Hayfield Township, **Crawford County**.

Description of Proposed Action/Activity: Construction of a single residence sewage treatment plant.

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#### IV. NPDES Applications for Stormwater Discharges from MS4

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*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

NPDES Permit No.	Applicant Name and Address	County	Municipality	Department Protocol (Y/N)
PAI136101	Indiana Township P. O. Box 788 941 Route 910 Indianola, PA 15051	Allegheny	Indiana Township	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAI136102	Fox Chapel Borough 401 Fox Chapel Road Pittsburgh, PA 15238	Allegheny	Fox Chapel Borough	Y
PAI136103	Edgeworth Borough 301 Beaver Road Sewickley, PA 15143	Allegheny	Edgeworth Borough	Y
PAI136104	White Oak Borough 2280 Lincoln Way McKeesport, PA 15131	Allegheny	White Oak Borough	Y
PAI136105	North Huntingdon Township 11279 Center Highway Irwin, PA 15642	Westmoreland	North Huntingdon Township	Y
PAI136106	Chippewa Township 2811 Darlington Road Beaver Falls, PA 15010	Beaver	Chippewa Township	Y
PAI136107	Dunbar Township 128 Township Drive Dunbar, PA 15431	Fayette	Dunbar Township	Y
PAI136108	Leet Township 198 Ambridge Avenue Ambridge, PA 15003	Allegheny	Leet Township	Y
PAI136109	Municipality of Murrysville 4100 Sardis Road Murrysville, PA 15668	Westmoreland	Murrysville Borough	Y
PAI136110	Connellsville City P. O. Box 698 Connellsville, PA 15425	Fayette	Connellsville	Y
PAI136111	South Beaver Township 1164 SR 168 Darlington, PA 16115	Beaver	South Beaver Township	Y
PAI136112	Fayette County Commissioners 4th Fl., Fayette County Courthouse 61 East Main Street Uniontown, PA 15401	Fayette	Uniontown	Y
PAI136113	Leetsdale Borough 85 Broad Street Leetsdale, PA 15056	Allegheny	Leetsdale Borough	Y
PAI136114	Somerset Township 615 Vanceville Road Eighty-Four, PA 15330	Washington	Somerset Township	Y
PAI136115	Adams Township P. O. Box 112 Sidman, PA 15955	Cambria	Adams Township	Y

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**V. Applications for NPDES Waiver Stormwater Discharges from MS4**


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*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG136243	Wall Borough 413 Wall Avenue Wilmerding, PA 15148	Allegheny	Wall Borough	Y
PAG136244	Lorain Borough 451 Green Valley Street Johnstown, PA 15902	Cambria	Lorain Borough	Y

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG138309	Ellport Borough 313 Burns Avenue Ellwood City, PA 16117-1422	Lawrence	Ellport Borough	Y
PAG138317	Greene Township 9333 Tate Road Erie, PA 16509	Erie	Greene Township	Y
PAG138307	McKean Township 9231 Edinboro Road McKean, PA 16426	Erie	McKean Township	Y
PAG138305	Mercer County 503 Mercer County Courthouse Mercer, PA 16137	Mercer		Y
PAG138326	Perry Township R. R. 2, Box 287 Portersville, PA 16051	Lawrence	Perry Township	Y
PAG138304	Shenango Township 3439 Hubbard-West Middlesex Road West Middlesex, PA 16159	Mercer	Shenango Township	Y
PAG138302	South Pymatuning Township 3483 Tamarack Drive Sharpsville, PA 16150	Mercer	South Pymatuning Township	Y
PAG138327	Valencia Borough 70 Magee Avenue Valencia, PA 16059	Butler	Valencia Borough	Y
PAG138303	West Middlesex Borough P. O. Box 582 West Middlesex, PA 16159-0582	Mercer	West Middlesex Borough	Y
PAG138314	Wheatland Borough 71 Broadway Avenue Wheatland, PA 16161	Mercer	Wheatland Borough	Y

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#### **VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities**

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*Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011503051	Fred and Lisa Scannapiceo Commerce Blvd. and Baltimore Pike West Grove, PA 19390	Chester	Penn Township	East Branch Big Elk Creek HQ-TSF-MF
PAI011503052	Stan Zukin Zukin Properties Route 100 and Byers Road Chester Springs, PA 19425	Chester	Upper Uwchlan Township	Pickering Creek HQ-TSF
PAI01010903005	John Zaharchuk 3520 Bethlehem Pike Assoc., Inc. 621 Delaware Street New Castle, DE 19720	Bucks	Hilltown Township	Unnamed tributary to Mill Run TSF
PAS10D095-R	Michael Evans MJE Builders, Inc. Spinnerstown Road Milford, PA 18968	Bucks	Milford Township	Molasses Creek TSF



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*Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011503053	Gen Terra Corporation Charles Dobson Deerfield Subdivision 101 Marchwood Road Exton, PA 19341	Chester	Charlestown Township	Unnamed tributary Pigeon Creek HQ-TSF
PAI011503054	Pulte Homes of PA, LP Kenneth Brzozowski Windsor Ridge Subdivision 1100 Northbrook Drive Suite 200 Trevose, PA 19053	Chester	Upper Uwchlan Township	Unnamed tributary to Pickering Creek HQ-TSF
PAI014603001	JB & EB, LLC R. J. Sell Dodge Tract Subdivision 404 Main Street Pennsburg, PA 18073	Montgomery	Pennsburg Borough	Macoby Creek TSF

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

*Pike County Conservation District: HC6, Box 6770, Hawley, PA 18428, (570) 226-8220.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025203006	Trinity Estates c/o Steven Wright 135 Conashaugh Lakes Milford, PA 18337	Pike	Delaware Township	Dingmans Creek HQ-CWF
PAI025203007	William Shi Maple Park Garden Apts. 28 Manor Dr. Newton, NJ 07860	Pike	Dingman Township	Sawkill Creek EV
PAS10V020R	Department of Transportation (SR 2001) c/o Sam Sebastinelli P. O. Box 111 Scranton, PA 18501	Pike	Dingman and Delaware Townships	Vantine Brook HQ-CWF Sawkill Creek EV Sloat Brook EV Raymond Kill HQ-CWF Conashaugh Creek HQ-CWF Adams Creek EV

*Lehigh County Conservation District: Lehigh Ag. Ctr., Ste. 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023903018	Arthur Wright 675 State Rd. Emmaus, PA 18049	Lehigh	Salisbury Township Emmaus Borough	Little Lehigh Creek HQ-CWF
PAI023903019	Lower Macungie Township 3400 Brookside Rd. Macungie, PA 18062	Lehigh	Lower Macungie Township	Little Lehigh Creek HQ-CWF
PAI023903020	Jaindl Land Co. 3150 Coffeetown Rd. Orefield, PA 18069	Lehigh	South Whitehall and Upper Macungie Townships	Little Lehigh Creek HQ-CWF

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

*Clarion Conservation District: R. R. 3, P. O. Box 265, Mayfield Prof. Bldg. District, Clarion, PA 16214.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI061603001	Clarion County Economic Development Corp. 338 Amsler Avenue, Suite One Shippenville, PA 16254	Clarion	Beaver Township	UNT to Canoe Creek HQ-CWF

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**VII. List of NOIs for NPDES and/or Other General Permit Types**


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PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

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**CAFO Notices of Intent Received**


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*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

**PAG123574, CAFO, Paul Swanger, Swanger Ranch**, 150 Kissel Barrick Road, Bainbridge, PA 17502. This proposed facility is in Conoy Township, **Lancaster County**.

Description of Size and Scope of Proposed Operation/Activity: The Swanger Ranch is an existing swine operation with 348.45 total AEU's. The operation currently includes 400 finishing swine with plans to add another 2,200 head. An estimated quantity of total annual manure production is 5,988 tons. The current barn utilizes a concrete underhouse manure storage system. The proposed single swine building measuring 82 inches by 221 feet will house approximately 2,200 finishing hogs. The manure will be stored in a concrete vault directly beneath the building. Approximately 650,000 gallons of manure can be stored in structure until land application. Of the 1,202,970 gallons generated in Barn 1, all of the manure is exported from the farm. Of the 225,540 gallons generated in Barn 2, 20,000 gallons is used on the farm with 205,540 gallons exported from the farm.

The receiving stream, UNT to Conoy Creek, is in watershed 7-G and classified for CWF.

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 the Pennsylvania Nutrient Management Act and The Clean Streams Law constitutes compliance with the State narrative water quality standards.

**PAG123573, CAFO, Charles Plushanski, Plushanski Farms Inc.**, 166 Rahn Road, Kutztown, PA 19530. This proposed facility is in Greenwich Township, **Berks County**.

Description of Size and Scope of Proposed Operation/Activity: The Plushanski Farms is an existing dairy operation with 690 total AEU's. The operation is comprised of a 646 head herd. An estimated quantity of total annual manure production is 15,205 tons. The milking herd is confined 100% of the time in the free-stall barn. The manure generated is handled as a liquid stored in a 106 foot by 16 foot concrete manure storage facility with a useable storage of 990,000 gallons. Manure generated from the dry cows in the old barn is scraped from the barn into a reception pit and then pumped to the concrete manure storage. Of the 3,046,981 gallons of liquid manure generated on the farm, 1,409,200 gallons is used on the farm and 1,637,781 gallons is exported from the farm. All of the 1,985 tons of solid manure produced is exported from the farm. All of the 524 tons of uncollected heifer manure is used on the farm.

The receiving stream, Maiden Creek, is in watershed 3-B and 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 the Pennsylvania Nutrient Management Act and The Clean Streams Law constitutes compliance with the State narrative water quality standards.

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**MS4 Notices of Intent Received**


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*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG132210	Dickson City Borough 801-805 Boulevard Avenue Dickson City, PA 18519	Lackawanna	Dickson City Borough	Lackawanna River CWF Hull Creek CWF	Y
PAG132209	Clarks Green Borough 104 N. Abington Road Clarks Summit, PA 18411	Lackawanna	Clarks Green Borough	Summit Lake Creek TSF	Y

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<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG132217	Edwardsville Borough 470 Main Street Edwardsville, PA 18704	Luzerne	Edwardsville Borough	Toby Creek WWF Susquehanna River WWF	Y
PAG132224	Ashley Borough 10 North Main Street Ashley, PA 18706	Luzerne	Ashley Borough	Solomans Creek CWF Sugar Notch Run CWF	Y
PAG132230	Avoca Borough 752 Main Street Avoca, PA 18641	Luzerne	Avoca Borough	Mill Creek CWF	Y
PAG132214	Whitehall Township 3219 MacArthur Road Whitehall, PA 18052	Lehigh	Whitehall Township	Lehigh River TSF-WWF Jordon Creek TSF Coplay Creek CWF Spring Creek CWF	Y
PAG132212	Slatington Borough 125 S. Walnut Street Slatington, PA 18080	Lehigh	Slatington Borough	Lehigh River TSF Trout Creek CWF UNT Trout Creek CWF	Y
PAG132211	Catasauqua Borough 118 Bridge Street Catasauqua, PA 18032	Lehigh	Catasauqua Borough	Lehigh River TSF Catasauqua Creek CWF	Y
PAG132213	Coopersburg Borough 5 North Main Street Coopersburg, PA 18036	Lehigh	Coopersburg Borough	Saucon Creek CWF	Y
PAG132216	Upper Saucon Township 5500 Camp Meeting Road Center Valley, PA 18034	Lehigh	Upper Saucon Township	Saucon Creek CWF	Y
PAG132246	Pittston Township 421 Broad Street Pittston, PA 18640	Luzerne	Pittston Township	Collins Creek CWF Mill Creek CWF Springbrook Creek CWF	Y
PAG132218	Kingston Township 180 East Center Street Shavertown, PA 18708	Luzerne	Kingston Township	Toby Creek TSF-CWF Huntsville Creek TSF-CWF Snake Creek TSF-CWF	Y
PAG132228	Jackson Township 2211 Huntsville Road Shavertown, PA 18708	Luzerne	Jackson Township	Drakes Creek CWF Huntsville Creek CWF E. Fork Harveys Creek CWF Harveys Creek CWF Brown Creek CWF	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG132219	Wilkes-Barre Township 150 Watson Street Wilkes-Barre Township, PA 18702	Luzerne	Wilkes-Barre Township	Coal Brook Creek CWF Spring Run Creek CWF	Y
PAG132220	Plymouth Borough 162 W. Shawnee Avenue Plymouth, PA 18651	Luzerne	Plymouth Borough	Susquehanna River WWF Wahdam's Creek CWF Brown Creek CWF Coal Creek CWF	Y
PAG132222	Larksville Borough 211 East State Street Larksville, PA 18704	Luzerne	Larksville Borough	Brown Creek CWF Susquehanna River WWF Boston Creek CWF	Y
PAG132223	Sugar Notch Borough Corner of Main and Freed Streets Sugar Notch, PA 18706	Luzerne	Sugar Notch Borough	Warrior Creek CWF	Y
PAG132234	Dallas Borough 25 Main Street Dallas, PA 18612	Luzerne	Dallas Borough	Toby Creek CWF Huntsville Creek CWF Huntsville Reservoir	Y
PAG132241	Factoryville Borough P. O. Box 277 Factoryville, PA 18419	Wyoming	Factoryville Borough	S. Branch Tunkhannock Creek TSF UNT S. B. Tunkhannock Creek CWF	Y
PAG132221	City of Pittston 35 Broad Street Pittston, PA 18640	Luzerne	Pittston City	Susquehanna River WWF	Y
PAG132215	North Whitehall Township 3256 Levans Road Coplay, PA 18037	Lehigh	North Whitehall Township	Rockdale Creek CWF Fells Creek CWF Spring Creek CWF Coplay Creek CWF Jordan Creek TSF-MF Lehigh River WWF	Y
PAG132247	City of Nanticoke 15 East Ridge Street Nanticoke, PA 18634	Luzerne	City of Nanticoke	Nanticoke Creek CWF Susquehanna River WWF Newport Creek CWF	Y

## NOTICES

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<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG132253	Throop Borough Municipal Building 436 Sanderson Street Throop, PA 18512	Lackawanna	Throop Borough	Lackawanna River TSF Eddy Creek WWF UNT Lackawanna River CWF	Y
PAG132201	Coplay Borough 98 S. 4th Street Coplay, PA 18037-1304	Lehigh	Coplay Borough	Lehigh River TSF	Y
PAG132207	Clarks Summit Borough 304 South State Street Clarks Summit, PA 18411	Lackawanna	Clarks Summit Borough	Summit Lake Creek TSF	Y
PAG132244	Dunmore Borough 400 South Blakely Street Dunmore, PA 18512	Lackawanna	Dunmore Borough	Roaring Brook CWF Meadow Brook CWF	Y
PAG132232	Warrior Run Borough Corner of Front and Hanover Streets Warrior Run, PA 18706	Luzerne	Warrior Run Borough	Warrior Creek CWF Meadow Brook CWF	Y
PAG132226	Dupont Borough 600 Chestnut Street Dupont, PA 18641	Luzerne	Dupont Borough	Mill Creek CWF Lidy Creek CWF Collins Creek CWF	Y
PAG132245	Wyoming Borough 277 Wyoming Avenue Wyoming, PA 18644	Luzerne	Wyoming Borough	Susquehanna River WWF Abram's Creek CWF	Y
PAG132203	Lower Towamensing Township 595 Hahns Dairy Road Palmerton, PA 18071	Carbon	Lower Towamensing Township	Aquashicola Creek TSF-MF Mill Creek CWF Fireline Creek CWF	Y
PAG132258	Foster Township 1000 Wyoming Avenue P. O. Box 465 Freeland, PA 18224	Luzerne	Foster Township	Black Creek CWF	Y
PAG132204	Weissport Borough 440 Allen Street Weissport, PA 18235	Carbon	Weissport Borough	Lehigh River TSF	Y
PAG132202	Borough of Bowmanstown P. O. Box 127 Bowmanstown, PA 18030	Carbon	Borough of Bowmanstown	Lehigh River TSF Fireline Creek CWF	Y
PAG132250	Fountain Hill Borough 5920 Hamilton Blvd. Suite 108 Allentown, PA 18106	Lehigh	Fountain Hill Borough	Lehigh River WWF	Y
PAG132249	Bangor Borough 197 Pennsylvania Ave. Bangor, PA 18013	Northampton	Bangor Borough	Bushy Meadow Creek CWF-MF Martins Creek CWF	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG132251	West Wyoming Borough 464 W. Eighth St. West Wyoming, PA 18644	Luzerne	West Wyoming Borough	Abraham's Creek CWF	Y
PAG132262	City of Hazleton 40 North Church St. Hazleton, PA 18201	Luzerne	City of Hazleton	Black Creek CWF Hazle Creek CWF	Y
PAG132233	Laflin Borough 47 Laflin Road Laflin, PA 18702	Luzerne	Laflin Borough	Gardner Creek CWF	Y
PAG132227	Plains Township 126 North Main St. Plains, PA 18705	Luzerne	Plains Township	Laurel Run Creek CWF Mill Creek CWF Susquehanna River WWF	Y

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG136243	Wall Borough 413 Wall Avenue Wilmerding, PA 15148	Allegheny	Wall Borough	Y
PAG136244	Lorain Borough 451 Green Valley Street Johnstown, PA 15902	Cambria	Lorain Borough	Y

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG138301	Adams Township 170 Hutchman Road Mars, PA 16046	Butler	Adams Township	Y
PAG138318	Cranberry Township 2525 Rochester Road, Suite 400 Cranberry Township, PA 16066	Butler	Cranberry Township	Y
PAG138309	Ellport Borough 313 Burns Avenue Ellwood City, PA 16117-1422	Lawrence	Ellport Borough	Y
PAG138306	Ellwood City Borough 525 Lawrence Avenue Ellwood City, PA 16117	Lawrence	Ellwood City Borough	Y
PAG138316	Girard Borough 34 Main Street West Girard, PA 16417	Erie	Girard Borough	Y
PAG138317	Greene Township 9333 Tate Road Erie, PA 16509	Erie	Greene Township	Y
PAG138313	Lake City Borough 2350 Main Street Lake City, PA 16423	Erie	Lake City Borough	Y
PAG138308	Lawrence County 430 Court Street New Castle, PA 16101	Lawrence		Y
PAG138322	Lawrence Park Township 4230 Iroquois Avenue Erie, PA 16511	Erie	Lawrence Park	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG138307	McKean Township 9231 Edinboro Road McKean, PA 16426	Erie	McKean Township	Y
PAG138323	Mars Borough P. O. Box 395 Mars, PA 16046	Butler	Mars Borough	Y
PAG138312	City of Meadville 984 Water Street Meadville, PA 16335	Crawford	City of Meadville	Y
PAG138305	Mercer County 503 Mercer County Courthouse Mercer, PA 16137	Mercer		Y
PAG138319	Penn State University 101P Office of Physical Plant University Park, PA 16802-1118	Erie	Erie City	Y
PAG138320	Penn State University 101P Office of Physical Plant University Park, PA 16802-1118	Mercer	City of Sharon	Y
PAG138326	Perry Township R. R. 2, Box 287 Portersville, PA 16051	Lawrence	Perry Township	Y
PAG138325	Seven Fields Borough 2200 Garden Drive Suite 100 Seven Fields, PA 16046	Butler	Seven Fields Borough	Y
PAG138310	Sharpsville Borough 1 South Walnut Street Sharpsville, PA 16150-1258	Mercer	Sharpsville Borough	Y
PAG138304	Shenango Township 3439 Hubbard-West Middlesex Road West Middlesex, PA 16159	Mercer	Shenango Township	Y
PAG138302	South Pymatuning Township 3483 Tamarack Drive Sharpsville, PA 16150	Mercer	South Pymatuning Township	Y
PAG138327	Valencia Borough 70 Magee Avenue Valencia, PA 16059	Butler	Valencia Borough	Y
PAG138324	Wayne Township 1418 Wampum Road Ellwood City, PA 16116	Lawrence	Wayne Township	Y
PAG138311	Wesleyville Borough 3421 Buffalo Road Erie, PA 16510	Erie	Wesleyville Borough	Y
PAG138303	West Middlesex Borough P. O. Box 582 West Middlesex, PA 16159-0582	Mercer	West Middlesex Borough	Y
PAG138314	Wheatland Borough 71 Broadway Avenue Wheatland, PA 16161	Mercer	Wheatland Borough	Y

## **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 a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice.

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Comments received within this 30-day comment period will be considered in the formulation of the final determinations regarding the 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. 6603501, Public Water Supply.

Applicant	<b>Wyoming County Housing Authority</b> P. O. Box 350 Nicholson, PA 18446
Township or Borough	Overfield Township, <b>Wyoming County</b>
Responsible Official	John J. Jennings, Executive Director
Type of Facility	PWS
Consulting Engineer	Acker Associates Consulting Engineers P. O. Box 899 Moscow, PA 18444
Application Received Date	March 7, 2003
Description of Action	A new water system for a housing development which includes a well, pressure tank, storage tank, booster pumps and chlorination.

*Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

##### Application No. Minor Amendment—Construction, Public Water Supply.

Applicant	<b>The Pennsylvania State University</b> 101 P Physical Plant Building University Park, PA 16802-1118
Township	College
Responsible Official	Robert E. Cooper Manager of Engineering Services 101 P Physical Plant Building University Park, PA 16802-1118
Type of Facility	PWS
Consulting Engineer	Scott E. Russell, P. E. 1200 West College Avenue State College, PA 16801

Application Received Date	June 12, 2003
Description of Action	Utility construction of a raw water transmission main and water treatment plant.

##### Application No. 5503501—Construction, Public Water Supply.

Applicant	<b>Pennsylvania Suburban Water Company</b> 204 East Sunbury Street Shamokin, PA 17872
Township	Monroe
Responsible Official	Richard T. Subasic Vice President and General Manager, Roaring Creek Division 204 E. Sunbury Street Shamokin, PA 17872

Type of Facility	PWS
Consulting Engineer	Peter J. Lusardi, P. E. CET Engineering Services 1240 North Mountain Road Harrisburg, PA 17112

Application Received Date	June 13, 2003
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Description of Action	Water treatment improvements of Monroe Manor Wells 4—6.
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##### Application No. Minor Amendment—Construction, Public Water Supply.

Applicant	<b>Pennsylvania American Water Company</b> 800 West Hersheypark Drive Hershey, PA 17033
Township	Rush
Responsible Official	William C. Kelvington 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 West Hersheypark Drive Hershey, PA 17033

Application Received Date	June 16, 2003
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Description of Action	Relocation of the Trout Run Well treatment building from Penn Five to the Trout Run area.
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### MINOR AMENDMENT

#### Applications Received under the Pennsylvania Safe Drinking Water Act

*Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

##### Application No. Minor Amendment.

Applicant	<b>Auburn Municipal Authority</b>
Township or Borough	Auburn Borough, <b>Schuylkill County</b>



Responsible Official	Ben Vaupel, Chairperson Auburn Municipal Authority P. O. Box 296 Auburn, PA 17922 (570) 752-4706
Type of Facility	Community Water System
Consulting Engineer	Karen C. Pollock, P. E. Systems Design Engineering, Inc. 4 Park Plaza Wyomissing, PA 19610 (610) 320-5490
Application Received Date	May 29, 2003
Description of Action	Application request for replacement of an existing 34 year old 200,000 gallon steel storage tank with a 300,000 gallon concrete tank.

## 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 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, 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 remedia-

tion 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 after 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.*

**Montgomery Mall—J. C. Penney**, Montgomery Township, **Montgomery County**. Darryl Borrelli, Manko, Gold, Katcher & Fox LLP, 401 City Ave., Suite 500, Bala Cynwyd, PA 19004, on behalf of Stephen Sussman, Montgomeryville Associates, 234 Mall Blvd., King of Prussia, PA 19406, has submitted a Notice of Intent to Remediate soil and groundwater 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 Record* on June 16, 2003.

**Edgewater Development**, City of Philadelphia, **Philadelphia County**. Erik Stephens, Manko, Gold, Katcher & Fox LLP, 401 City Ave., Suite 500, Bala Cynwyd, PA 19004, on behalf of Steve Cupps, NM Edgewater Joint Venture, 1000 Chesterbrook Blvd., Suite 100, Berwyn, PA 19312, has submitted a Notice of Intent to Remediate soil contaminated with chlorinated solvents, inorganics, other organics and PAH; and groundwater contaminated with inorganics and other organics. The applicant proposes to remediate the site to meet the Statewide Health and Site-Specific Standards. A summary of the Notice of Intent to Remediate was reported to have been published in *The Philadelphia Daily News* on June 13, 2003.

*Northcentral Region: Environmental Cleanup Program, 208 West Third Street, Williamsport, PA 17701.*

**Bernardi Italian Foods**, Town of Bloomsburg, **Columbia County**. Keystone Environmental Services, Inc., on behalf of Bernardi Italian Foods, 595 West 11th Street, Bloomsburg, PA 17815, has submitted a Notice of Intent to Remediate soil and groundwater contaminated with other organics. 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 *Press Enterprise* on March 12, 2003. See additional information in the Actions section of this *Pennsylvania Bulletin*.

*Northwest Region: Environmental Cleanup Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**International Paper**, City of Erie, **Erie County**. Douglas E. Kier, P. G., on behalf of Scott Newell, Site Env. Engineer, International Paper, 1540 East Lake Rd., Erie, PA 16533, has submitted a Notice of Intent to Remediate Soil and Groundwater contaminated with chlorinated

solvents, diesel fuel, fuel oil no 2, inorganics, leaded gasoline, PAH, PCB and unleaded gasoline. The applicant proposes to remediate the site to meet the Site-Specific, Nonresidential Standards. A summary of the Notice of Intent to Remediate was reported to have been published in the *Erie Times News* on June 13, 2003.

#### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**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 regulations to operate solid waste processing or disposal area or site.**

*Southeast Region: Regional Solid Waste Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**Permit Application No. 101069. SECCRA Landfill,** P. O. Box 221, Kennett Square, PA 19348, London Grove Township, **Chester County.** The application is submitted to modify SECCRA's permit so that it may construct and operate a landfill gas-to-energy system. The application was received by the Southeast Regional Office on June 4, 2003.

### 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 a 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 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 (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, New Source Review Chief, (570) 826-2531.*

**39-304-009D: Ransom Industries, LP** (Tyler Pipe-Penn Division, 101 North Church Street, Macungie, PA 18062) for the construction of an additional grinding operation and channeling the unit to an existing air cleaning device at their facility in Macungie Borough, **Lehigh County.**

**54-310-028A: Lehigh Asphalt Paving and Construction Co.** (P. O. Box 549, Tamaqua, PA 18252) for the construction of a VSI crusher (replacement of an existing crusher) and associated air cleaning device at their facility at the Andreas Quarry, West Penn Township, **Schuylkill County.**

**54-302-072: van Hoekelen Greenhouses, Inc.** (Route 309, P. O. Box 88, McAdoo, PA 18237-0088) for the construction of one coal fired boiler, one oil fired boiler and one emergency generator at their facility in Kline Township, **Schuylkill County.**

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.*

**06-05014C: Garden State Tanning, Inc.** (16 South Franklin Street, Fleetwood, PA 19522) to modify a surface coating line (no. 1) by constructing a roll coater in the Borough of Fleetwood, **Berks County.** The source is subject to 40 CFR Part 63, Subpart TTTT—National Emission Standards for Hazardous Air Pollutants from Leather Coating Facilities.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.*

**04-00707C: Colona Transfer, L. P.** (P. O. Box 311, Currie Road, Portersville, PA 16051) for installation of bridge crane clamshell bucket to be used for off loading barges on the Ohio River at Colona Dock in Monaca Borough, **Beaver County.**

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Devendra Verma, New Source Review Chief, (814) 332-6940.*

**24-025A: Alpha Sintered Metals, Inc.** (95 Mason Run Road, Ridgway, PA 15853) for the installation of Sly Baghouse collection system in the mixing room of their

powdered metal component manufacturing facility in Ridgway Township, **Elk County**. This is a State-only facility.

**37-321A: New Castle Recycling, Inc.** (215 Gardner Ave., New Castle, PA 16101) for post construction plan approval of an existing dust collection system to capture fugitive emissions from scrap metal torch cutting operation in the City of New Castle, **Lawrence County**.

**Intent to Issue Plan approvals and intent to issue or amend Operating Permits under the Air Pollution Control Act 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.*

**46-0037N: Cabot Supermetals** (County Line Road, P. O. Box 1608, Boyertown, PA 19512-1608) for their plant in Douglass and Colebrookdale Townships, **Montgomery and Berks Counties**. Under 25 Pa. Code §§ 127.44(a) and 127.424(b), the Department intends to issue a Plan Approval to authorize the applicant to construct:

A. Four 15-S and one 30-S Attritor mills installed in 1991 and 1996 in Building 47.

B. The 4th tantalum extraction line installed in 1993 in Building 74.

C. One KTaF tray dryer, new KTaF crystal recovering system, a heating tank and additional filter containers installed in 1992 in Building 19 as described in the Applicant's application of December 2001 and subsequent submissions. The Plan Approval will subsequently be incorporated into the company'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, this operation will emit 165.1 tons per year of VOCs. This is a major facility subject to 25 Pa. Code Chapter 127, Subchapter E. The company shall provide 219.3 tons of VOC emission reduction credits (ERC) at a 1.3:1 ratio to offset the increase in potential to emit from the proposed construction/modification prior to obtaining an operating permit in accordance with 25 Pa. Code § 127.206(d).

In March 2002, the Department approved the transfer of 40 tpy of VOC ERCs from Cypress Energy, L. P. in Maryland to PCM to offset VOC emission increase. The Department plans to approve 132.5 tons of VOC ERC generated from CSM by installing a VOC recovery unit. CSM shall provide additional 56 tons of VOC ERCs to offset all the remaining emission increases to meet the New Source Review requirements of 25 Pa. Code Chapter 127, Subchapter E.

Copies of the application, the Department's analysis and other documents used in the evaluation of the application are available for public review during normal business hours at Southeast Regional Office, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA.

Interested persons may submit written comments, suggestions or objections concerning the proposed Plan Approval to the regional office within 30 days of publication of this notice. Written comment submitted to the Department during the 30-day public comment period should include the name, address and telephone number of the commentator, identification of proposed Permit No. PA-46-0037N and a concise statement regarding the relevancy of the information or objections to the issuance of the permit.

A public hearing may be held, if the Department, in its discretion, decides that a hearing is warranted based on the comments received. Persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in the newspaper or the *Pennsylvania Bulletin* or by telephone, where the Department determines notification is sufficient. Written comments or requests for a public hearing should be directed to Francine Carlini, Regional Manager, Air Quality, Department of Environmental Protection, Southeast Regional Office, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19628, (610) 832-6242.

To assure compliance with the applicable standards, the Department will place the following conditions on the plan approval:

*General Requirements*

*Part I*

1. This Plan Approval is issued to the permittee for the construction of the following sources:

A. Four 15-S and one 30-S Attritor mills installed in 1991 and 1996 in Building 47.

B. The 4th tantalum extraction line was installed in 1993 in Building 74.

C. One KTaF tray dryer, new KTaF crystal recovering system, a heating tank and additional filter bottoms were installed in 1992 in Building 19.

2. The permittee shall comply with all of the existing requirements of its Operating Permit No. TVOP-46-00037 and Plan Approval No. PA-46-0037M for Building 47 modification, except as specified in this Plan Approval. This Plan Approval supersedes previously issued Plan Approvals and Plan Approval Extensions bearing the numbers PA-46-0037D and PA-46-0037H.

3. New source review requirements.

A. The following indicates the emission increases at CSM facility from 1991—2001. The emissions increases shall be offset at the ratio specified in the following table.

<i>Sources</i>	<i>Buildings</i>	<i>Installation Year</i>	<i>VOC Emissions</i>	<i>Offset Ratio</i>	<i>Required ERC</i>
Batch Attritor Mills	47/101	1991	8.0		10.4
Crystallizers and Tanks	19	1992	63.1		82.03
4th Tantalum Line	74	1993	77.9		101.27
Batch Attritor Mills	47/101	1996	16.1	1.3:1.0	20.93
Emergency Generators		1996	0.2		0.26
Emergency Generators		1999	0.32		0.42

Sources	Buildings	Installation Year	VOC Emissions	Offset Ratio	Required ERC
Process Modification	55	2001	2.56	1.0:1.0	2.56
Boiler House		2001	1.42		1.42
Total			169.6		219.3

The CSM shall provide 219.3 tons of VOC ERCs to offset all VOC emission increases at the facility.

B. CSM is eligible for 123.85 tpy of VOC ERCs resulting from the use of the methyl isobutyl ketone (MIBK) recovery unit. Registration of the VOC ERCs in the Pennsylvania ERC Registry System will constitute certification that the ERCs meet the ERC-generating requirements and are available for use.

ERC Generating Sources	Average actual emissions in tpy before MIBK recovery unit (1998–1999)	MIBK PTE in tpy after MIBK recovery system	Actual emissions (tpy) of sources installed without plan approvals	ERC in tpy =B-C-D
A	B	C	D	
19	189.4 + 166.6 = 178	58.3	41.0	78.70
23	27.2 + 20.8 = 24	0.0	0.0	24.00
74	204.3 + 176.8 = 190.55	160.8	47.6	0.00
WWTP	60.9 + 51.8 = 56.35	22.4	12.8	21.10
			Total ERCs =	123.85

C. The Department approved 40 tons of VOC ERCs transfer from Cypress Energy, L. P. in Maryland to CSM.

D. CSM shall provide additional 56 tons of VOC ERCs to offset all the remaining emission increases to meet the New Source Review requirements of 25 Pa. Code Chapter 127, Subchapter E.

E. CSM created ERCs by installing an MIBK recovery system. To create the ERCs, the MIBK recovery unit shall be operated at an overall annual percentage recovery efficiency of at least 75%, by weight, exclusive of downtime of the MIBK recovery system for required maintenance, to the extent that maintenance does not exceed 250 hours in any rolling 12 month period.

F. CSM shall not exceed a facility wide MIBK usage rate of 241.5 tons per year as a 12-month rolling sum as calculated by an emission factor of 0.105 lb MIBK/lb of KtaF and maximum production rate of 4.6 million lbs per year in a 12-month rolling sum.

G. The VOC emissions from the waste water treatment Plant (WWTP) shall not exceed 22.4 tons as MIBK per year as a 12-month rolling sum. The WWTP consists of the following units: six segregation tanks, nine neutralization tanks, transfer pump station (I-tank), holding tanks (E/EE-tanks), filter press and filtrate tank, settling basin (lagoon 5) and neutralization basin (lagoon 6). Compliance with the emission limit shall be determined based on a mass balance.

H. The VOC emissions from each building shall not exceed the limits specified:

Pollutants	Source Location	VOC from the Building (tpy)	VOC from WWTP (tpy)	Total (tpy)
MIBK	Buildings 19 and 23	58.3	2.9	61.2
MIBK	Building 74	160.8	19.5	180.3
Ethanol SDA	Building 47	2.1	22.0	24.1
Other VOC	Buildings 55, 106, 93			2.7
Miscellaneous VOC	Laboratory (Buildings 11 and 41)			3
		Total	44.4	268.3

Part II

1. This Plan Approval revises and supersedes the requirements in Plan Approval No. PA-46-0037H and also allows the modification of the following sources in Building 74:

A. Conversion of the two existing Niobium (Nb) processing lines into lines capable of processing Tantalum (Ta) or (Nb).

B. Modification of the existing processes capable of performing the extraction step in the Atlas boxes and the stripping step in the Quinn unit.

C. Allowing any combination of existing Ta lines, converted Ta/Nb lines and Atlas boxes/Quinn unit to recover Ta/Nb metals.

D. Increasing the annual production rate of Potassium Tantalum Fluoride (KtaF) to 4.6 million pounds per 12-month rolling sum.

E. Installation of a MIBK recovery system consisting of a stripper column and flash unit. CSM shall maintain a spare flash system as a backup unit.

F. Installation of an intermediate storage tank.

2. Building No. 74 includes the following VOC emitting sources: any combination of equipment for Tantalum Line Nos. 1–4 and Ta/Nb Line Nos. 5 and 6; Atlas boxes and Quinn units; MIBK transfer tank; raffinate acidification tanks; feed tanks; raffinate storage tanks; fraction storage tank and other ancillary and support equipment or similar.

3. Additional Operating Requirements for Building 74.

A. Each Atlas box and the Quinn unit shall be covered when it contains VOC materials.

B. The emissions from the feed tanks, storage tanks, the intermediate storage tank and transfer tanks shall be ducted to the existing acid gas scrubber. The scrubber

shall not be by-passed at any time when materials are in the tanks. The control efficiency shall be equal to or greater than 90%.

C. The permittee shall monitor the following parameters:

i. Pressure drop across the scrubber packing, utilizing a differential manometer or equivalent.

ii. Water flow rate to the scrubber, utilizing a rotameter or equivalent.

iii. Makeup water flow rate to the scrubber, utilizing a rotameter or equivalent.

4. Emission limitations.

A. HF emissions from the scrubber shall not exceed 10 ppm by volume, 0.2 pound per hour and 1.1 tons per year as a 12-month rolling sum.

B. The VOC emissions from Building 74 shall not exceed 160.8 tons as MIBK per year as a 12-month rolling sum.

5. Recordkeeping requirement.

A. The permittee shall keep daily records of HF concentration in the water recycled to the scrubber.

B. For the purpose of calculating MIBK emissions, the permittee shall measure and record the following information on a weekly basis:

i. MIBK tank inventory at the beginning of each week and the amount of MIBK received at the tank during the week.

ii. MIBK contents in the influent and effluent of the recovery system and the flow rates of the unit's influent and effluent.

iii. MIBK content in the effluent of the stripper (to the wastewater treatment plant) and the flow rates of the stripper effluent.

iv. The methods for measuring the MIBK content shall be submitted to the Department for approval prior to the issuance of this Plan Approval.

C. The permittee shall establish an emission tracking and calculation system to document actual VOC and HF emissions from each source category in Building 74. The Tracking and Calculation System shall be submitted to the Department for approval prior to the issuance of an Operating Permit. The tracking and calculation system shall be used to demonstrate compliance with all the Conditions of this Plan Approval.

6. Test requirements.

A. The permittee shall establish operating pressure drop range across the scrubber packing based on the stack test required.

B. The permittee shall conduct a performance test in accordance with the provisions of 25 Pa. Code Chapter 139 to show compliance with the emission limitations of this Plan Approval and to establish the relationship of the HF concentrations in the scrubber recycle water vs. the makeup water flow rate required in conditions of this Plan Approval. The stack test shall be performed while the source is operating at the maximum rated capacity specified in the plan approval application.

C. The permittee shall conduct a study to establish MIBK recovery system operating parameters to demonstrate the MIBK recovery efficiency described in the previous conditions. The study shall be submitted to the

Department for approval. The Department will specify the required operating parameters prior to the issuance of the Operating Permit.

D. At least 60 days prior to conducting the performance test and the study, CSM shall submit to the Department for approval the procedures for the test and a sketch with dimensions indicating the location of sampling ports and other data to ensure the collection of representative samples.

E. Southeast Regional Air Quality Manager shall be notified of the date and time of the performance test at least 30 days prior to the test.

F. Within 30 days after conducting the performance tests, two copies of the complete test report, including all operating conditions, shall be submitted to the Regional Air Quality Manager for approval.

### *Part III*

1. This Plan Approval supersedes all previously issued Plan Approvals bearing the number PA-46-0037D for Building 19.

2. Operating requirements.

A. Operation restrictions.

i. The two existing heating tanks are allowed to be operated concurrently. Each heating tank shall not exceed 84 batches per week.

ii. The Ta salt production shall be limited to 4.6 million pounds per year in a 12-month rolling sum.

B. The acid gases from the HF storage tank, the heating tanks, the crystallizers, the secondary recovery crystallizers and the tray dryers shall be vented to and controlled by Building 19 acid gases scrubber. The scrubber shall not be bypassed at any time when materials are in the units listed in this condition.

C. The owner and operator shall monitor the following parameters as identified by the study specified in the conditions:

i. Pressure drop across the scrubber packing, utilizing a differential manometer, or equivalent.

ii. Water flow rate to the scrubber, utilizing a rotameter or equivalent.

iii. Makeup water flow rate to the scrubber, utilizing a rotameter or equivalent.

D. The owner and operator shall establish a minimum operating pressure drop across the packing based on the study specified in the following conditions.

E. The owner and operator shall conduct a study to establish a relationship of the HF concentrations in the scrubber recycle water vs. the makeup water flow rate. The results of the study shall be submitted to the Department for approval and for establishing minimum makeup water flow rate required.

3. Emission limitations.

A. HF emissions from the scrubber shall not exceed 10 ppm by volume, 0.73 pound per hour and 3.2 tons per year as a 12-month rolling sum.

B. The VOC emissions from Building No. 19 shall not exceed 58.3 tons as MIBK per year as a 12-month rolling sum. Building No. 23 shall not emit any MIBK.

C. HCl emissions should not exceed 0.15 pound per hour and 0.67 ton per year in a 12-month rolling sum.

D. PM emissions shall not exceed 0.59 pound per hour and 2.6 tons per year in a 12-month rolling sum.

4. Recordkeeping requirement.

A. The owner and operator shall keep records of weekly HF usage in Building 19.

B. The owner and operator shall keep records of Ta salt produced on a weekly basis.

5. Test requirements.

A. The permittee shall establish operating pressure drop range across the scrubber packing based on the following stack test required.

B. The permittee shall conduct a performance test in accordance with the provisions of 25 Pa. Code Chapter 139 to show compliance with the emission limits stated in previous conditions and to establish the relationship of the HF concentrations in the scrubber recycle water vs. the makeup water flow rate required in the conditions of this Plan Approval. The stack test shall be performed while the source is operating at the maximum rated capacity specified in the plan approval application.

C. At least 60 days prior to conducting the performance test, CSM shall submit to the Department for approval the procedures for the test and a sketch with dimensions indicating the location of sampling ports and other data to ensure the collection of representative samples.

D. Southeast Regional Air Quality Manager shall be notified of the date and time of the performance test at least 30 days prior to the test.

E. Within 30 days after conducting the performance tests, two copies of the complete test report, including all operating conditions, shall be submitted to the Regional Air Quality Manager for approval.

**46-0018C: Brown Printing Company** (668 Gravel Pike, East Greenville, PA 18041-2199) for replacing a lithographic printing press and installing a regenerative thermal oxidizer at its facility in Upper Hanover Township, **Montgomery County**. This facility is a Title V facility. This replacement will result in 11.23 tons of VOCs per year to be emitted. The Plan Approval and Operating Permit will contain recordkeeping requirements and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

**46-0112B: Palmer International, Inc.** (2036 Lucon Road, Skippack, PA 19474) for the installation of a Turbo Mixer, which will replace three existing Sigma Blenders, at their facility in Skippack Township, **Montgomery County**. This facility is a non-Title V facility. Along with all other processes in Building A, the new Turbo Blender will be subject to an emission limit of 21.0 tons per year for VOCs, 8.83 tons per year for HAPs (formaldehyde), 13.56 tons per year for NO<sub>x</sub> and 43.8 tons per year for CO. Emissions of PM from all processes in Building A are expected to be less than 9 tons per year and emissions of SO<sub>x</sub> are expected to be less than 14 tons per year from all processes in Building A. The existing thermal oxidizer will control emissions of VOCs and HAPs. Emissions of PM will continue to be controlled by dust collectors and the existing thermal oxidizer. The Plan Approval will contain recordkeeping and further operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

**09-0027E: Fres-co System USA, Inc.** (3005 State Road, Telford, PA 18969) for the air cleaning devices

installation and modification of its Telford facility in West Rockhill Township, **Bucks County**. This plant is a Title V facility. This installation and modification will result in 8.7 tons per year of NO<sub>x</sub> emissions to be emitted. The Plan Approval and Operating Permit will contain recordkeeping requirements and operating restrictions 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: Mark J. Wejkszner, New Source Review Chief, (570) 826-2531.*

**58-308-001: Baran's Surplus Company, Inc.** (138 West Poplar Street, Plymouth, PA 18651) for the construction of an aluminum "sweat" furnace (an aluminum scrap melting furnace) on SR 3005, Auburn Township, **Susquehanna County**.

The respective furnace will be used to reclaim aluminum from aluminum scrap that contains substantial amounts of iron. The air contaminant emissions from the furnace will be controlled by a thermal afterburner. The resultant air contaminant emissions will be up to 0.468 ton of NO<sub>x</sub>, 0.109 ton of CO, 0.775 ton of SO<sub>x</sub>, 0.017 ton of hydrocarbons and 0.605 ton of PM.

The Department's review of the information contained in the application indicates that the proposed sweat furnace will comply with all applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants including the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12 and Subpart RRR of the National Emission Standards for Hazardous Air Pollutants (40 CFR 63.1500—63.1519, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production). Based on this finding, the Department intends to approve the application and issue plan approval.

**39-313-045: Carpenter Company** (57 Olin Way, Fogelsville, PA 18051) for the modification of the expanded polystyrene (EPS) manufacturing process and associated air pollution control equipment (boiler) at their Fogelsville Plant in Upper Macungie Township, **Lehigh County**. The modification will include installing a large boiler (replaces the existing boiler) to provide process steam and to be used as the control device for the EPS manufacturing process. The actual VOC emissions from the EPS manufacturing process will be a maximum of 88.8 tons per year which remains unchanged from the annual limit listed in the issued Title V Operating Permit. The Plan Approval and Operating Permit will contain emission limits, testing, monitoring, work practices, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements. The facility currently has a Title V Operating Permit No. 39-00040. 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.

**40-328-003A: Hunlock Creek Energy Ventures** (390 Route 11, Hunlock Creek, PA 18621) for the modification and operation of a Simple Cycle Gas Turbine at their facility in Hunlock Township, **Luzerne County**. The plan approval limits NO<sub>x</sub> emissions from the turbine not to exceed 25 ppm (corrected to 15% O<sub>2</sub>), excluding start-up and shutdown periods. Also, the NO<sub>x</sub> emissions from the turbine shall not exceed 41 lbs/hr (3-hour rolling average) and 37.9 tons per year (12-month rolling sum), which include start-up and shutdown periods. The company is required to operate and maintain a Continuous Air

Contaminants Emission Monitoring System, which is certified by the Department. The turbine will be limited to 1,850 annual operating hours as previously approved by the Department. 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. The Plan Approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit 40-00005 through an administrative amendment at a later date. For further details, contact Mark J. Wejkszner at (570) 826-2531 within 30 days after publication date.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.*

**06-03551: MGP, LLC** (796 Fritztown Road, Sinking Spring, PA 19608) for the construction of a graphite milling facility controlled by five fabric collectors in Spring Township, **Berks County**. The facility is a non-Title V (State-only) facility. This construction will result in the potential to emit 13.4 tons per year of particulate. The approval will include monitoring work practices, recordkeeping and report requirements designed to keep the source within all applicable air quality requirements.

**67-05069D: Oldcastle Stone Products** (P. O. Box 220, Thomasville, PA 17364) for installation of a dolomitic limestone pelletizing system with associated controls at their Thomasville Facility in Jackson Township, **York County**. The new system is expected to be able to process approximately 30 tons per hour of limestone. Particulate matter emissions associated with the new system will be controlled by a bin vent dust collector and shall stay below 0.02 grain per dry standard cubic foot. The source is subject to 40 CFR 60, Subpart OOO—Standards of Performance for New Stationary Sources. The plan approval and operating permit shall contain additional recordkeeping and operating restrictions 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.*

**14-00014A: Glenn O. Hawbaker, Inc.** (711 East College Avenue, Bellefonte, PA 16823) for the construction of a cage mill stone crusher, screen and associated conveyors, the installation of an air cleaning device, a fabric collector, on a primary impact stone crusher, the construction of a recycled asphalt pavement crusher and screen, the construction of two aggregate bins and a recycled asphalt pavement bin, the construction of a 33,000 gallon reprocessed/recycled oil storage tank and the modification of a drum mix asphalt concrete plant by using no. 5 and no. 6 fuel oil and reprocessed/recycled oil as fuel in addition to the natural gas and no. 2 fuel oil which the plant is currently allowed to use at their Pleasant Gap facility on SR 64 in Spring Township, **Centre County**.

Fugitive PM emissions from the proposed cage mill crusher, screen and conveyors will be negligible due to the inherent wet nature of the material processed. The PM emissions from the exhaust of the proposed impact crusher fabric collector will not exceed .02 grain per dry standard cubic foot of collector exhaust. The fugitive PM emissions from the proposed recycled asphalt pavement crusher and screen, the two aggregate bins and the recycled asphalt pavement bin are expected to be negligible as are the VOC emissions from the proposed reprocessed/recycled oil storage tank. The asphalt con-

crete plant will emit no more than 46.5 pounds of NO<sub>x</sub>, 92 pounds of CO, 80.4 pounds of SO<sub>x</sub> and 36.5 pounds of VOCs when firing no. 5 fuel oil, no. 6 fuel oil or reprocessed/recycled oil nor will its fabric collector emit more than .02 grain of PM per dry standard cubic foot of collector exhaust. The total combined HAP emissions from the asphalt plant are not expected to exceed 6.92 tons in any 12 consecutive month period and the formaldehyde and toluene emissions are not expected to exceed 1.73 and 1.58 tons, respectively, in the same period.

Following the completion of the proposed construction, installation and modification, the entire facility will not emit more than 50.59 tons of NO<sub>x</sub>, 99.91 tons of CO, 88.83 tons of SO<sub>x</sub>, 39.96 tons of VOCs and 99.96 tons of PM<sub>10</sub> in any 12 consecutive month period.

The Department has determined that the proposed construction, installation and modification will comply with all applicable regulatory requirements pertaining to air contamination 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 approve the application and issue plan approval.

The following is a summary of the conditions the Department plans to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. The asphalt plant shall only be fired on gas (natural or LP), virgin no. 2 fuel oil, virgin no. 5 fuel oil, virgin no. 6 fuel oil or reprocessed/recycled oil. None of the oil used for fuel shall have a sulfur content in excess of .5% (by weight).
2. The reprocessed/recycled oil used as fuel in the asphalt plant shall not contain contaminants equal to or in excess of the following limitations:

<i>Contaminant</i>	<i>Limitation</i>
Arsenic	5 parts per million
Cadmium	2 parts per million
Chromium	10 parts per million
Lead	100 parts per million
total halides	1000 parts per million
Polychlorinated biphenyls (PCBs)	None detected (detection limit no higher than 2 parts per million)

Additionally, the flashpoint of the reprocessed/recycled oil shall not be less than 140°F.

3. The permittee shall not accept for use in the asphalt plant any shipment of reprocessed/recycled oil for which the arsenic, cadmium, chromium, lead, total halides and PCB content and/or flashpoint are unknown or which fails to meet any established limitation for any of these, nor shall the permittee accept for use any shipment of any oil to be used as fuel for which the sulfur content is unknown or which fails to meet the limitation established herein for sulfur content.

4. A sample of each load of reprocessed/recycled oil delivered to the asphalt plant shall be taken at the time of delivery to the plant using a sampling technique capable of achieving a representative composite sample of the entire load and shall be retained onsite for at least 2 years for random selection and analysis by the Department. The samples are to be sealed and identified as to the date of delivery, delivery invoice number, and the like.

5. A sample of each shipment of reprocessed/recycled oil delivered to the asphalt plant shall be taken at the

time of delivery to the plant using a sampling technique capable of achieving a representative composite sample of the entire load and analyzed for total halides concentration using EPA Method 9077. The results of these analyses will not, however, be accepted by the Department as a demonstration of compliance with the limitation established herein for total halides should they differ from the results of analyses performed using EPA Method 9076. The permittee shall also perform a complete analysis for all contaminants and parameters for which limitations have been established herein using reference methods specified by the Department on at least 1 out of every 15 shipments of reprocessed/recycled oil received.

6. The following analytical methods are to be employed to determine compliance with the contaminant limitations and flashpoint limitation specified herein unless the Department specifies an alternate method:

<i>Contaminant/Property</i>	<i>Analytical Method</i>
Arsenic	EPA 200.8 and/or EPA 200.7
Cadmium	EPA 200.8 and/or EPA 200.7
Chromium	EPA 200.8 and/or EPA 200.7
Lead	EPA 200.8 and/or EPA 200.7
Total halides	EPA 9076
Sulfur	ASTM D 4294
PCBs	EPA 3580 for extraction and EPA 608 for analysis
Flashpoint	ASTM D 93

7. The permittee shall submit an annual report to the Department listing the delivery date, quantity delivered, origin and delivery invoice number of each shipment of reprocessed/recycled oil delivered to the asphalt plant during the previous calendar year as well as identifying the arsenic, cadmium, chromium, lead, total halides, PCB and sulfur contents and the flashpoint of each shipment. This report shall further identify the specific source of all analytical data provided and describe why this analytical data accurately represents the contaminant concentrations and flashpoint of the reprocessed/recycled oil delivered to the plant. This report shall be submitted by March 15 of each year.

8. The emission of particulate matter from the exhaust of the fabric collector controlling the emissions from the asphalt plant shall not exceed .02 grain per dry standard cubic foot of exhaust.

9. The NO<sub>x</sub> emissions from the asphalt plant shall not exceed .093 pound per ton of asphalt concrete produced when firing no. 5 fuel oil or reprocessed/recycled oil and .091 pound per ton when firing no. 6 fuel oil.

10. The carbon monoxide emissions from the asphalt plant shall not exceed .169 pound per ton of asphalt concrete produced when firing no. 5 fuel oil or reprocessed/recycled oil and .184 pound per ton when firing no. 6 fuel oil.

11. The SO<sub>x</sub> emissions from the asphalt plant shall not exceed .16 pound per ton of asphalt concrete produced when firing no. 5 fuel oil, no. 6 fuel oil or reprocessed/recycled oil.

12. The VOC emissions (expressed as methane) from the asphalt plant shall not exceed .07 pound per ton when firing no. 5 fuel oil or reprocessed/recycled oil and .073 pound per ton when firing no. 6 fuel oil.

13. The total combined HAP emissions from the asphalt plant shall not exceed 6.92 tons in any 12 consecutive month period, the formaldehyde emissions shall not exceed 1.73 tons in any 12 consecutive month period, the toluene emissions shall not exceed 1.58 tons in any 12

consecutive month period and the emission of any other individual HAPs shall not exceed 1 ton in any 12 consecutive month period.

14. The quantity of asphalt concrete produced in the asphalt plant shall not exceed 1,082,500 tons in any 12 consecutive month period.

15. The asphalt plant shall not process recycled asphalt pavement at a rate in excess of 25% of the total weight of all materials charged to the drum at any given time.

16. The asphalt plant shall be stack tested to determine the NO<sub>x</sub>, CO and VOC emission rates when firing no. 5 fuel oil and processing virgin material, when firing no. 5 fuel oil and processing a combination of virgin material and recycled asphalt pavement, when firing no. 6 fuel oil and processing virgin material, when firing no. 6 fuel oil and processing a combination of virgin material and recycled asphalt pavement, when firing reprocessed/recycled oil and processing virgin material and when firing reprocessed/recycled oil and processing a combination of virgin material and recycled asphalt pavement. The plant shall additionally be stack tested to determine its particulate matter emission rate while operating in any one of these six operating scenarios. Should the required NO<sub>x</sub>, CO and VOC stack testing not be performed for any of the six operating scenarios identified, the asphalt plant will not be authorized to operate using that operating scenario.

17. The emission of particulate matter from the exhaust of the fabric collector to be installed on the primary impact crusher shall not exceed .02 grain per dry standard cubic foot.

18. The fabric collector to be installed on the primary impact crusher shall be equipped with instrumentation to continuously monitor the pressure differential across the collector. Additionally, the air compressor used to supply compressed air to the collector shall be equipped with an air dryer and oil trap and spare fabric collector bags shall be kept on hand.

19. The only material which may be processed by the cage mill crusher, screen and associated conveyors is material to which sufficient water has first been applied in a wet screen to render the material dust-free.

20. The primary crushing operation at this facility shall not process more than 2,780,000 tons of material in any 12 consecutive month period, the secondary crushing operation shall not process more than 1,612,400 tons in any 12 consecutive month period and the "portable" crushing operation shall not process more than 525,000 tons in any 12 consecutive month period.

21. No material shall be stored in the new oil storage tank which has a vapor pressure equal to or greater than 10.5 kilopascals.

22. The amount of waste oil burned in the Clean Burn Model CB5000 and Model 86BH waste oil furnaces shall not exceed 21,608 and 11,680 gallons, respectively, in any 12 consecutive month period.

23. Following the completion of the construction, installation and modification approved herein, the NO<sub>x</sub>, CO, SO<sub>x</sub>, VOCs and PM<sub>10</sub> emissions from the entire facility shall not exceed 50.59, 99.91, 88.83, 39.96 and 99.96 tons, respectively, in any 12 consecutive month period.

**49-00007B: Merck and Company, Inc.** (P. O. Box 600, Danville, PA 17821-0600) for the installation of an air cleaning device, a condenser, on an existing pharmaceutical reaction vessel (EX-2640) in their facility in



Riverside Borough, **Northumberland County**. The respective facility is a major facility for which Title V Operating Permit No. 49-00007 has been issued.

The VOC emissions, a small fraction of which are also HAPs, from the respective vessel are currently controlled by one of two thermal oxidizers (IN-226 or IN-5000). Merck proposes to install a condenser as an alternate air pollution control device for use at times when use of the thermal oxidizers is impossible or inconvenient. When the condenser is in use as the air pollution control device for vessel EX-2640, the resultant VOC and HAP emission rates will be 4.0 pounds and .4 pound per day, respectively.

The Department's review of the information contained in the application indicates that following the installation of the condenser, vessel EX-2640 will comply with all applicable requirements pertaining to air contamination sources and the emission of air contaminants including the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12 and Subparts GGG and MMM of the National Emission Standards for Hazardous Air Pollutants, 40 CFR 63.1250–63.1261 and 40 CFR 63.1360–63.1369. Based on this finding, the Department intends to approve the application and issue plan approval.

The following is a summary of the conditions the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. The air contaminant emissions from pharmaceutical reaction vessel EX-2640 shall be controlled by a 77.04 square foot condenser (CN-2640) unless the emissions are being vented to thermal oxidizer IN-226 or thermal oxidizer IN-5000.

2. The coolant used in condenser CN-2640 shall have a temperature no greater than  $-20^{\circ}\text{C}$  and the gas exiting the condenser shall have a temperature no greater than  $-10^{\circ}\text{C}$ .

3. The coolant feed line to condenser CN-2640 shall be equipped with instrumentation capable of monitoring and recording the coolant temperature on a continuous basis.

4. The VOC emissions from vessel EX-2640 shall not exceed 1,460 pounds in any 12 consecutive month period following the application of air contaminant emission control and the HAP emissions shall not exceed 146 pounds in any 12 consecutive month period.

5. Vessel EX-2640 and condenser CN-2640 shall comply with all applicable requirements of Subparts GGG and MMM of the National Emission Standards for Hazardous Air Pollutants.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**24-131G: SGL Carbon, LLC** (900 Theresia Street, St. Marys, PA 15857). In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b), the Department intends to issue a plan approval for their plant in the Borough of St. Marys, **Elk County**. The facility currently has a Title V permit which was issued on November 4, 1998. 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.

This application is a modification of Permit No. 24131E to change the operating conditions of the scrubbing device for a chemical vapor deposition reactor. Issuance of the

plan approval is recommended with the appropriate conditions in the plan approval:

1. The source shall comply with 25 Pa. Code §§ 123.1, 123.31 and 123.41 for fugitive, odor and visible emissions, respectively.

2. Total PM emissions from the source, as measured from the scrubber stack, shall not exceed 0.04 grain/dscf. Compliance with the PM emission limit shall be assumed based on water flow and pressure readings, as defined in condition no. 6 and operation of the source and control device in accordance with manufacturer's specifications and in a manner consistent with good air pollution control practices.

3. The scrubber shall be equipped with inlet water flow and pressure drop gauges. The gauges shall be mounted in easily accessible locations and shall be maintained in good working conditions at all times. Water flow levels and pressure drop shall be maintained in accordance with manufacturer's specifications. Scrubber pressure drop and water flow readings shall be taken daily when the source is in operation.

4. Scrubber water flow shall be maintained at a minimum of 3.5 gallons/minute during all periods of operation.

5. HCl emissions from the source, as measured from the scrubber stack, shall not exceed 0.002 lb/hour, averaged over the reaction period. Compliance with the HCl emission limit shall be assumed based on maintaining the scrubber waterflow rate at a minimum of 3.5 gallons/minute.

6. The permittee shall perform weekly preventative maintenance inspections of the control device and associated equipment.

7. The permittee shall maintain records, at a minimum, of pressure drop and water flow readings and maintenance performed on the control device. The records shall be maintained onsite for a minimum of 5 years and shall be made available to the Department upon request.

8. The permittee shall comply with 25 Pa. Code § 127.25 as follows: no person shall cause or permit the operation of the source unless the source and air cleaning device are operated and maintained in accordance with specifications in the Plan Approval application and Condition Nos. 1–10. A person may not cause or permit the operation of this source in a manner inconsistent with good operating practices.

#### OPERATING PERMITS

##### **Intent to Issue Title V Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.**

*Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.*

**23-00040: Laurel Pipeline Co., L. P.** (3398 Garnet Mine Road, Bethel Township, PA 19061) for an administrative amendment to the Title V Operating Permit at their Boothwyn Breakout Station in Bethel Township, **Delaware County**. The facility operates as a refined petroleum products transportation pipeline. The permit is being amended to incorporate changes approved under Plan Approval PA-23-0040A for storage tanks nos. 18 and 19. Plan Approval PA-23-0040A was issued to the facility for the modification of Operating Permit No. 23-312-054C to include VOC emissions associated with landing losses

in floating-roof tanks. The revised Title V operating permit will contain additional monitoring, recordkeeping, reporting and work practice standards to keep the facility operating within all applicable air quality requirements.

The conditions that have been addressed in the amended Title V Permit:

Section D, Source Level Requirements, Sources 118 and 119, Condition No. 001—Revised the condition to establish a total VOC emission limit of 17.5 tpy as a 12-month rolling sum, calculated monthly. This emission limit includes 13.48 tpy as roof landing losses. The roof landing losses are not considered a net emission increase from the facility.

Section D, Source Level Requirements, Sources 118 and 119, revise monitoring and recordkeeping; and describe throughput capacity.

Omitted all testing, monitoring, recordkeeping and additional requirements conditions regulated to 40 CFR 60, Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.*

**06-05029: Reading Body Works Inc.** (P. O. Box 650, Reading, PA 19607-0650) for the operation of a heavy-duty truck manufacturing and surface coating in the City of Reading, **Berks County**. This action is a renewal of the Title V Operating Permit issued in 1998.

**22-05012: ISG Steelton Inc.—formerly Bethlehem Steel Corp.** (215 South Front Street, Steelton, PA 17113) for the amendment of the facility's Title V Operating Permit No. 22-05012 to incorporate the change of company name for the facility in the Borough of Steelton, **Dauphin County**. The facility's major sources of emissions include arc furnaces and other heating furnaces and boilers, which primarily emit NOx, sulfur and VOCs.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: Muhammad Zaman, Program Manager, (570) 327-0512.*

**60-00002: NGC Industries, Inc.** (P. O. Box 338, Milton, PA 17847) for renewal of the Title V Operating Permit for their paperboard manufacturing facility in White Deer Township, **Union County**. The facility is currently operating under Title V Operating Permit 60-00002, which was issued July 31, 1998. The facility's main sources include two natural gas/no. 6 fuel oil fired boilers. The facility has the potential to emit major quantities of NOx, SOx, CO and PM10. The facility has the potential to emit VOCs and HAPs below the major emissions thresholds. The proposed Title V Operating Permit contains all applicable requirements including Federal and State regulations. In addition, monitoring, recordkeeping and reporting conditions regarding compliance with all applicable requirements are included.

**Intent to Issue Operating Permits under the Air Pollution Control Act 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.*

**09-00132: McAdoo and Allen, Inc.** (201 S. Hellertown Avenue West, Quakertown, PA 18951) for operation their pigments dispersions manufacturing facility in

Quakertown Borough, **Bucks County**. The permit is for a non-Title V (State-only) facility. The facility's main sources include: two natural gas fired boilers, six no. 2 fuel oil fired boilers, a chip manufacturing process consisting of roll-mills and blenders. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**23-00081: Chichester School District** (711 Market Street, Marcus Hook, PA 19061) for their elementary school in Marcus Hook Borough, **Delaware County**. The permit is for a non-Title V (State-only) facility. The school has a potential to emit less than 25 tons per year of NOx and VOCs. The facility is a Natural Minor. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the plant operating within all applicable air quality requirements.

**09-00097: Lower Bucks Hospital** (501 Bath Rd., Bristol, PA 19007) for operation of their in-patient care facility in Bristol Township, **Bucks County**. The permit is for a non-Title V (State-only) facility. The facility's main sources include: four 350 Hp boilers and three emergency generators. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**46-00132: Lansdale Crematory, Inc.** (Derstine and Cannon Avenues, Lansdale, PA 19446) for a non-Title V Facility, State-only, Natural Minor Operating Permit in Lansdale Borough, **Montgomery County**. The permit is for the operation of three human crematoriums, from which the main pollutants emitted are PM and NOx. PM and NOx emissions from the facility are each less than 1 ton per year. The permit will include monitoring, recordkeeping, reporting and work practice standards 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: Mark J. Wejkszner, New Source Review Chief, (570) 826-2531.*

**48-313-088: Elementis Pigments, Inc.** (1525 Wood Avenue, Easton, PA 18042-3186) for the operation of an electrostatic precipitator that replaces two older units to control emissions emanating from three existing DHY Kilns and an existing copperas dryer at their facility in Wilson Borough, **Northampton County**. The installation will result in a particulate emission rate of 20.8 tons per year based on the best available technology allowable particulate emission standard of 0.02 grain/DSCF. 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.

**40-399-036A: Johns Manville International** (600 Jaycee Drive, Valmont Industrial Park, Hazleton, PA 18201) for the operation of an insulation manufacturing process which is controlled by the use of a new regenerative thermal oxidizer (RTO) at their facility in Hazle Township, **Luzerne County**. The VOC emissions from the facility shall not exceed 15 TPY. The NOx emissions from the facility shall not exceed 26 TPY. Also, the RTO shall operate at a minimum operating temperature of 1,400°F and have a minimum destruction efficiency of

95%. The Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

**54-310-022: Schuylkill Contracting Co., Inc.** (913 Valley Road, R. R. 2, Box 2312, Pottsville, PA 17901) for the operation of a stone crushing plant and associated air cleaning device at their facility in Foster Township, **Schuylkill County**. The crushing operation will have spray bars to control fugitive emissions. The crushing operation is also subject to NSPS Part 60, Subpart 000. The Operating Permit will contain additional reporting, recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.*

**36-03051: Johnson and Johnson Merck CPC** (1838 Colonial Village Lane, Lancaster, PA 17601) for operation of its consumer pharmaceutical company in East Lampeter Township, **Lancaster County**. The State-only Operating Permit shall contain appropriate conditions designed to keep the facility operating within all applicable air quality requirements.

**44-03007: Hoenstine Funeral Home, Inc.** (75 Logan Street, Lewistown, PA 17044) for operation of its human crematory in Lewistown Borough, **Mifflin County**. Actual annual emissions of NOx and PM10 are each expected to be less than 1 ton. The State-only Operating Permit will include monitoring and recordkeeping requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

**67-03069: H and H Castings, Inc.** (4300 Lincoln Highway, York, PA 17406) for operation of its aluminum foundry in Hellam Township, **York County**. The facility has the following annual potential emissions: 12 tons PM10, 6 tons SOx, 3 tons VOCs, 1 ton NOx and 1 ton CO. The State-only Operating Permit will include emission restrictions, work practice standards and monitoring, recordkeeping and reporting requirements 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: Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.*

**47-00010: Hines Color** (233 PP&L Road, Danville, PA 17821), for a State-only Operating Permit for their greenhouses in Anthony and Derry Townships, **Montour County**. The main sources at plant no. 1 include four no. 2 fuel oil fired boilers. The main sources at plant No. 2 include two larger no. 2 fuel oil fired hot water boilers and two smaller no. 2 fuel oil fired boilers. The facility has the potential to emit VOCs, HAPs, PM10, NOx, CO and SOx below the major emission thresholds. The proposed State-only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**18-00008: Woolrich, Inc.** (2 Mill Street, P. O. Box 138, Woolrich, PA 17779) for a State-only (Synthetic Minor) Operating Permit for their wool fabric manufacturing facility in Pine Creek Township, **Clinton County**. The facility's main sources include: two natural gas/no. 2 fuel oil fired steam boilers, propane and no. 2 fuel oil fired space heaters, wool dyeing and finishing operations and three parts cleaning stations. The facility has the poten-

tial to emit major quantities of SOx. The facility has taken restrictions to keep its annual SOx emissions below the major emission thresholds. The facility has the potential to emit CO, NOx, PM10, VOCs and HAPs below the major emission thresholds. The proposed State-only operating permit contains all applicable requirements including monitoring, recordkeeping and reporting conditions.

**41-00021: Farm and Home Oil Co.** (P. O. Box 146, 100 Tank Farm Road, Macungie, PA 18062), for renewal of a State-only (Synthetic Minor) Operating Permit for their petroleum bulk storage and distribution facility in Armstrong Township, **Lycoming County**. The facility's main sources include two no. 2 fuel oil fired furnaces, eight aboveground storage tanks (no. 2 fuel oil, gasoline, diesel fuel and gasoline additives), one gasoline loading operation, one distillate loading operation, various pumps, valves and flanges and one oil/water separator. The facility has the potential to emit major quantities of VOCs and HAPs. The facility has taken VOC and HAP emissions limitations to fall below the major emission thresholds. The facility has the potential to emit NOx, SOx, PM—PM10 and CO below the major emission thresholds. The proposed operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**49-00052: Butter Krust Baking Co., Inc.** (249 North Eleventh Street, Sunbury, PA 17801) for their bakery facility in the Borough of Northumberland, **Northumberland County**. The facility's main sources include six space heaters, four natural gas fired air make-up units, two natural gas fired air conditioning units, one bread oven, one water heater, one parts cleaning station, one basket washing system and one catalytic oxidizer. The permittee is required to operate the catalytic oxidizer to control emissions from the baking oven. The facility has the potential to emit VOCs, NOx and CO below the major emission thresholds. The proposed operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**08-00006: GE Railcar Repair Services** (P. O. Box 250, Thomas Avenue, Sayre, PA 18840) for their facility in Sayre Borough, **Bradford County**. The facility's main sources include a railcar painting operation, a grit blasting operation and small natural gas and no. 2 fuel oil fired combustion sources. The facility has the potential to emit VOCs and HAPs above major emission thresholds but have taken enforceable restrictions on the amount of paint permitted to be used in a 12 consecutive month period to become a Synthetic Minor facility. The facility has the potential to emit SOx, CO, NOx and PM10 below the major emission thresholds. The proposed 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.*

**24-00121: Industrial Timber and Lumber Co.** (54C Montmorenci Road, Ridgway, PA 15853) for a Natural Minor Operating Permit for a wood-fired boiler and sawmill in Ridgway Township, **Elk County**.

**25-00919: Vitco Co.—Division of Fast Fabricators** (802 Walnut Street, Waterford, PA 16441) for a Natural Minor Operating Permit to operate a facility involved in the glass lining of pipe and fittings. Their facility is in Waterford Township, **Erie County**. Emissions sources associated with this facility include two surface coating

booths, one shot blasting machine, three natural gas dryers and seven natural gas space heaters.

**COAL AND NONCOAL 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); and The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and 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 an 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.

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 identified in this notice for the respective coal and noncoal applications. 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 who 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 the person 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 wishes to have the conference conducted in the locality of the proposed mining activities.

*Coal Applications Received*

*Effluent Limits*—The following coal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	
Alkalinity greater than acidity*			

\* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (1) surface runoff (resulting from a precipitation event of less than or equal to a 10-year 24-hour event) from active mining areas, active areas disturbed by coal refuse disposal activities and mined areas backfilled and revegetated; and (2) drainage (resulting from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.*

**54930101T. Daniel J. Joy** (121 New Philadelphia Road, Kaska, PA 17959), transfer of an existing anthracite surface mine operation from J & L Coal Company in Branch Township, **Schuylkill County** affecting 102.8 acres, receiving stream: Schaefer Creek. Application received June 10, 2003.

*California District Mining Office: 25 Technology Drive, California Technology Park, Coal Center, PA 15423, (724) 769-1100.*

**03841302. NPDES Permit PA0214132, Canterbury Coal Company** (R. D. 1, Box 119, Avonmore, PA 15618), to renew the permit for the David/Dianne Mine in Kiskiminetas Township, **Armstrong County** and related NPDES permit, 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. The first downstream potable water supply intake from the point of discharge is N/A, Application received May 20, 2003.

*Noncoal Applications Received*

*Effluent Limits*—The following noncoal mining applications that include an NPDES permit application will be subject to, at a minimum, the following technology-based effluent limitations for discharges of wastewater to streams:

Parameter	30-Day Average	Daily Maximum	Instantaneous Maximum
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH*		greater than 6.0; less than 9.0	

\* The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to surface runoff resulting from a precipitation event of less than or equal to a 10-year 24-hour event. If coal will be extracted incidental to the extraction of noncoal minerals, at a minimum, the technology-based effluent limitations identified under coal applications will apply to discharges of wastewater to streams.

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.*

**01740601A1C7 and NPDES Permit PA0594407. Valley Quarries, Inc.** (P. O. Box J, Chambersburg, PA 17201), renewal of NPDES Permit for discharge of treated mine drainage in Joy and Cumberland Townships, **Adams County**, receiving stream: Rock Creek (WWF). Application received June 6, 2003.

**35910301C3 and NPDES Permit PA0595209. West Mt. Sand, Stone & Aggregates, Ltd.** (P. O. Box 389, Skippack, PA 19474), renewal of NPDES Permit for discharge of treated mine drainage in Newton and Ransom Townships, **Lackawanna County**, receiving stream: Keyser Creek. Application received June 9, 2003.

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.*

**4876SM12. Waterford Sand & Gravel Co.** (15871 Sturgis Road, Union City, PA 16438). Renewal of NPDES Permit No. PA0108448, Waterford Township, **Erie County**. Receiving streams: unnamed tributary to Trout Run (CWF). The first downstream potable water supply intake from the point of discharge is Waterford Municipal Authority. NPDES Renewal application received June 9, 2003.

*Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.*

**14030802. Timothy F. Tressler and Michael C. Fedor**, 26 Sandrock Court, Port Matilda, PA 16870. Commencement, operation and restoration of a Small Industrial Minerals (Shale) permit in Huston Township, **Centre County** affecting 5 acres. Receiving streams: unnamed tributary, tributary to Bald Eagle Creek. Application received June 4, 2003.

**41030801. John W. Pepper**, R. D. 1, Box 54, Granville Summit, PA 16926. Commencement, operation and restoration of a Small Industrial Minerals (Bluestone) permit in McNett Township, **Lycoming County** affecting 1 acre. Receiving streams: unnamed tributaries to Lycoming Creek, to Hawk Run. Application received June 3, 2003.

## FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341), requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the

FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit or Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit 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. Individuals 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 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

*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**E39-405A. City of Allentown, Bureau of Parks**, 2700 Parkway Boulevard, Allentown, PA 18104-5399 in City of Allentown, **Lehigh County**, U. S. Army Corps of Engineers, Philadelphia District.

To construct and maintain a stream restoration project in a 4,135-foot reach of Little Cedar Creek (HQ-CWF) and to replace and repair various golf cart bridges along the same reach. The project's purpose is to stabilize stream banks, reduce sediment load, improve water quality, improve fish habitat and establish a riparian corridor. The project will utilize hard engineering techniques including the placement of concrete interlocking blocks in the initial phase and soft engineering techniques, including the placement of rock weirs, rock armor and biologs in subsequent phases. The project is known as the Allentown Municipal Golf Course Little Cedar Creek Rehabilitation Project. Phase III of the multiphase project includes restoration of 1,150 feet of Little Cedar Creek with

work consisting of stream and floodway excavation and filling, rock armor, soil reinforcement matting, cellular soil confinement and system placement and vegetation; and to remove and replace two existing golf cart bridges. Phase III begins approximately 1,150 feet upstream of Little Cedar Creek's intersection with SR 1002 (Tilghman Street) (Allentown West, PA Quadrangle N: 17.6 inches; W: 5.3 inches) and extends downstream to SR 1002 (Allentown West, PA Quadrangle N: 17.3 inches; W: 5.0 inches) in the City of Allentown, Lehigh County.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**E22-462: Derry Township**, 235 Hockersville Road, Hershey, PA 17033 in Derry Township, **Dauphin County**, ACOE Baltimore District.

Install and maintain a bicycle/pedestrian bridge to cross an unnamed tributary to the Swatara Creek (WWF), just north of Wood Road and west of the intersection of Wood and Bullfrog Valley Roads (Hershey, PA Quadrangle Lat.: 40°15'29"; Long.: 76°41'07") in Derry Township, Dauphin County.

**E21-352: George W. Ely and Linda M. Ely**, 11 Brenely Lane, Mt. Holly Springs, PA 17065 in the Borough of Mt. Holly Springs, **Cumberland County**, ACOE Baltimore District.

To construct and maintain a 410 square foot addition to an existing private residence at 11 Brenely Lane along Mountain Creek (TSF), approximately 210 feet downstream of the Pine Street Bridge (Mt. Holly Springs, PA Quadrangle N: 20.92 inches; W: 8.85 inches) in the Borough of Mt. Holly Springs, Cumberland County.

**E50-215: Dr. Robert Matsko and Dr. Robert Matsko, Jr.**, 16 Dickens Drive, Marysville, PA 17053 in Rye Township, **Perry County**, ACOE Baltimore District.

To construct and maintain a bridge with a 20-foot span to cross an unnamed tributary to Fishing Creek (CWF), locally known as Trout Run, approximately 2.4 miles west of Marysville Borough along Route 850 and about 700 feet above the confluence of Trout Run and Fishing Creek (Wertzville, PA Quadrangle N: 13.5 inches; W: 1 inch) in Rye Township, Perry County.

*Northcentral Region: Water Management Program Manager, 208 West Third Street, Williamsport, PA 17701, (570) 327-3636.*

**E17-383. Department of Transportation, Engineering District 2-0**, P. O. Box 342, Clearfield, PA 16830. Upgrade of SR 0800, Section B14 bridge across West Branch Susquehanna River and Stream Enclosure in unnamed tributary to Wolf Run in Lawrence Township, **Clearfield County**, ACOE Baltimore District (Clearfield, PA Quadrangle N: 6.9 inches; W: 2.1 inches).

To modify, operate and maintain an existing bridge across the West Branch Susquehanna River (WWF) and an existing stream enclosure in an unnamed tributary to Wolf Run (CWF) for the upgrade of 1.7 miles of SR 0080, Section B14. Modifications to the existing dual seven span bridge across the West Branch Susquehanna River include replacement of the superstructure, expansion of the bridge to a curb-to-curb width of 35-feet, replacement of both abutments, replacement of Pier No. 1 and refurbishing of Piers 2—6. Modification of the 72-inch diameter corrugated metal pipe enclosing the unnamed tributary to Wolf Run include relining the 72-inch diameter pipe with a 60-inch diameter spiral metal steel pipe. The SR 0080, Section B14 will temporarily impact 0.17-acre of wetlands while impacting 1,075 feet of waterway. The

impacted wetlands will be restored upon project completion. The project is at the intersection of SR 0080 and SR 0879. This permit also authorizes the construction, operation, maintenance and removal of temporary construction crossings, three span causeway, stream diversions and cofferdams. All temporary structures shall be constructed with clean rock, free of fines and silts or other nonerodible material. The temporary causeway shall be maintained or removed during construction "shut-down" periods to ensure passage of debris and ice jams during seasonal high flows. Upon completion of the construction activities, all temporary structures shall be removed and the areas restored to original contours and elevations.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-1017 A1. Grasinger Homes, Inc.**, 8035 Saltsburg Road, Pittsburgh, PA 15239. Culvert in a tributary to Little Plum Creek in Plum Borough, **Allegheny County**, Pittsburgh ACOE District (New Kensington East, PA Quadrangle N: 2.7 inches; W: 3.16 inches). The applicant proposes to amend Permit No. E02-1017, which authorized removal of an existing structure and construction and maintenance of a 60-inch diameter CMP culvert with a length of 96 feet in a tributary to Little Plum Creek.

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**E10-379, Shadow Creek Development Associates**, 215 Executive Drive, Suite 300, Cranberry Township, PA 16066, Shadow Creek Plan of Lots in Cranberry Township, **Butler County**, ACOE Pittsburgh District (Mars, PA Quadrangle N: 17 inches; W: 10 inches).

The purpose of the application is to develop the Shadow Creek Plan of lots for a residential development consisting of 46 single-family residential buildings lots. The construction activities will impact approximately 40.0 acres of the 51.8 acres property. The construction will result in a total of 305 feet of stream enclosures to five unnamed tributaries of Wolf Creek (WWF), as follows:

1. 130 feet enclosure of UNT 4.
2. 70 feet enclosure of UNT 5.
3. 105 feet for the construction of breastworks for an out-of-scope dam for stormwater management.

An additional 470 feet of UNT 4 will be impacted and replaced with a 410-foot relocated channel.

**E43-297, Department of Transportation, District 1-0**, 255 Elm Street, P. O. Box 398, Oil City, PA 16301. SR 208, Segment 0200, Offset 0412 Across Wolf Creek in Grove City Borough, **Mercer County**, ACOE Pittsburgh District (Grove City, PA Quadrangle N: 7.65 inches; W: 11.00 inches).

To remove the existing structure and to construct and maintain a prestressed concrete spread box beam bridge having a clear, normal span of 107.5 feet and an underclearance of 10 feet across Wolf Creek on SR 0208, Segment 0200, Offset 0412 approximately 0.1 mile east of SR 173.

**E42-300, Bradford Regional Airport Authority**, 212 Airport Road, Suite E, Lewis Run, PA 16738. Runway 32 End Safety Area in Lafayette Township, **McKean County**, ACOE Pittsburgh District (Lewis Run, PA Quadrangle N: 8.53 inches; W: 0.95 inch).

The applicant proposes to construct and maintain a 400-foot extension to the existing Runway 32 End safety area to meet Federal Aviation Administration require-

ments at the Bradford Regional Airport involving: (1) permanently fill 1.3 acres of EV wetlands areas; and (2) construction of 2.6 acres of wetlands as compensation for

wetland impacts. The project proposes to directly affect 1.3 acres of wetlands. Wetland creation of 2.6 acres is proposed to compensate for wetland impacts.

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## ACTIONS

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### THE PENNSYLVANIA CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

#### FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS

The Department of Environmental Protection (Department) has taken the following actions on previously received applications for new, amended and renewed NPDES and WQM permits, applications for permit waivers and Notices of Intent (NOIs) for coverage under general permits. This notice of final action is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

<i>Location</i>	<i>Permit Authority</i>	<i>Application Type or Category</i>
Section I	NPDES	Renewals
Section II	NPDES	New or amendment
Section III	WQM	Industrial, sewage or animal waste; discharge into groundwater
Section IV	NPDES	MS4 individual permit
Section V	NPDES	MS4 permit waiver
Section VI	NPDES	Individual permit stormwater construction
Section VII	NPDES	NOI for coverage under NPDES general permits

Sections I—VI contain actions related to industrial, animal or sewage wastes discharges, discharges to groundwater and discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities and concentrated animal feeding operations (CAFOs). Section VII contains notices for parties who have submitted NOIs for coverage under general NPDES permits. The approval for coverage under these general NPDES permits is subject to applicable effluent limitations, monitoring, reporting requirements and other conditions set forth in each general permit. The approval of coverage for land application of sewage sludge or residential septage under applicable general permit is subject to pollutant limitations, pathogen and vector attraction reduction requirements, operational standards, general requirements, management practices and other conditions set forth in the respective permit. The permits and related documents, effluent limitations, permitting requirements and other information are on file and may be inspected and arrangements made for copying at the contact office noted before the action.

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.

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#### I. NPDES Renewal Permit Actions

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*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>
PA0040011	United Mobile Homes, Inc. 485 Patterson Lane Belle Vernon, PA 15012	Westmoreland County Rostraver Township	UNT of Cedar Creek
PA0043648-A2	EME Homer City Generation LP 1750 Power Plant Road Homer City, PA 15748-9558	Indiana County Center Township	UNT to Cherry Run

<i>NPDES No. (Type)</i>	<i>Facility Name and Address</i>	<i>County and Municipality</i>	<i>Stream Name (Watershed No.)</i>
PA0094013	Hilary C. Hoffer R. D. 1 Box 177 Mt Pleasant, PA 15666	Westmoreland County Unity Township	UNT of Brinker Run
PA0094102	Thom A. Yohe 405 Vista Valley Road Washington, PA 15301	Washington County South Franklin Township	UNT of Chartiers Creek
PA0215937	RoxCoal Inc. 1576 Stoystown Road P. O. Box 149 Friedens, PA 15541	Somerset County Stonycreek Township	Lamberts Run

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## II. New or Expanded Facility Permits, Renewal of Major Permits and EPA Nonwaived Permit Actions

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*Northeast Region: Water Management Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**NPDES Permit No. PA0061832**, Industrial Waste, **Tamaqua Cable Products Corporation**, P. O. Box 347, Schuylkill Haven, PA 17972. This proposed facility is in Schuylkill Haven Borough, **Schuylkill County**.

Description of Proposed Action: Renewal of NPDES Permit.

**NPDES Permit No. PA0063088**, Sewage, **Charles Sobolka, III**, 15461 Country Route 59, Dexter, NY 13634-2113. This proposed facility is in Williams Township, **Northampton County**, discharge to unnamed tributary to the East Branch of Saucon Creek.

Description of Proposed Action/Activity: Renewal of NPDES Permit.

*Southcentral Region: Water Management Program Manager; 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

**NPDES Permit No. PA0083771; Amendment A1 and WQM Permit No. 3691410; Amendment 03-1**, Industrial Waste, **Brian Hershock, Turkey Hill Dairy, Inc.**, 2601 River Road, Conestoga, PA 17516-9630. This proposed facility is in Manor Township, **Lancaster County**.

Description of Proposed Operation/Activity: Construct clarifier, surge tank, sludge holding tank, control building and other alterations. Modify the anaerobic digester process. Authorization to discharge to Mann's Run in Watershed 7-J.

*Northwest Region: Water Management Program Manager; 230 Chestnut Street, Meadville, PA 16335-3481.*

**NPDES Permit No. PA0222356**, Industrial Waste, **TDY Industries, Inc.**, 1000 Six PPG Place, Pittsburgh, PA 15222. This proposed facility is in Edinboro Borough, **Erie County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Darrows Creek.

**NPDES Permit No. PA0222267**, Sewage, **Lovett's Manufactured Home Park STP**, 4440 Old State Road, McKean, PA 16426. This proposed facility is in Washington Township, **Erie County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Darrows Creek.

**NPDES Permit No. PA0222496**, Sewage, **Summerville Borough Municipal Authority**, P. O. Box 278, Summerville, PA 15864. This proposed facility is in Summerville Borough, **Jefferson County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Runaway Run.

**NPDES Permit No. PA0221015**, Sewage, **Turnpike Commission**, P. O. Box 67676, Harrisburg, PA 17106-7676. This proposed facility is in North Beaver Township, **Lawrence County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to an unnamed tributary to the Beaver River.

**NPDES Permit No. PA0030325**, Sewage, **Pulaski Elementary School, Wilmington Area School District**, 300 Wood Street, New Wilmington, PA 16142-1016. This proposed facility is in Pulaski Township, **Lawrence County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to an unnamed tributary to the Shenango River.

**NPDES Permit No. PA0239101**, Sewage **Norbert S. Garbisch III, VicNor Farms Inc.**, P. O. Box 227, Connoquenessing, PA 16027-0227. This proposed facility is in Forward Township, **Butler County**.

Description of Proposed Action/Activity: Construction/operation of a single residence sewage treatment plant.

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## III. WQM Industrial Waste and Sewerage Actions under The Clean Streams Law (35 P. S. §§ 691.1—691.1001)

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*Southeast Region: Water Management Program Manager; Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**WQM Permit No. 2399406 Amendment No. 1**, Sewerage, **Brandywine Operating Partnership, LP**, 16 Campus Boulevard, Suite 150, Newtown Square, PA 19073. This proposed facility is in Newtown Township, **Delaware County**.

Description of Proposed Action/Activity: Upgrading of the sewage treatment plant and revisions to the effluent limitations for nitrogen.



*Northeast Region: Water Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**WQM Permit No. 5403402**, Sewerage, **St. Clair Sewer Authority**, 16 South Third Street, St. Clair, PA 17970. This proposed facility is in E. Norwegian Township, **Schuylkill County**.

Description of Proposed Action/Activity: Construction of sewer extension and pump station in Tunnel Road area.

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-4707.*

**WQM Permit No. 6702403**, Sewerage, **Wrightsville Borough Municipal Authority**, 129 South Second Street, P. O. Box 187, Wrightsville, PA 17368-0187. This proposed facility is in Wrightsville Borough, **York County**.

Description of Proposed Action/Activity: Construction/operation of sewers and appurtenances.

**WQM Permit No. 0603401**, Sewerage, **North Heidelberg Sewer Company, Joseph Aichholtz**, P. O. Box 609, Bernville, PA 19506. This proposed facility is in Jefferson Township, **Berks County**.

Description of Proposed Action/Activity: Construction of a submersible pump station to serve five homes on Patricia Drive and Hickory Lane.

**WQM Permit No. 2877402, Amendment 03-1**, Sewerage, **Antrim Township Municipal Authority, Teresa Schnoor**, 10655 Antrim Church Road, Greencastle, PA 17225. This proposed facility is in Antrim Township, **Franklin County**.

Description of Proposed Action/Activity: Upgrade of lift station no. 5 and force main.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**WQM Permit No. 1101201**, Industrial Waste, **Greater Johnstown Water Authority**, P. O. Box 1287, Johnstown, PA 15907-1287. This proposed facility is in East Taylor Township, **Cambria County**.

Description of Proposed Action/Activity: Construction of water treatment plant (IW) to serve Saltlick WTP.

**WQM Permit No. 9939-S-A3**, Sewerage, **The McCandless Township Sanitary Authority**, 418 Arcadia Drive, Pittsburgh, PA 15237. This proposed facility is in McCandless Township, **Allegheny County**.

Description of Proposed Action/Activity: Construction of sanitary sewer and appurtenances to serve presidential plan—interceptor sewer replacement and upgrade.

**WQM Permit No. 0402404**, Sewerage, **Gary Regelman**, 142 Wampum Road, Wampum, PA 16157. This proposed facility is in Big Beaver Borough, **Beaver County**.

Description of Proposed Action/Activity: Construction of a sewage treatment plant to serve the Gary Regelman Single Residence STP.

**WQM Permit No. 3203401**, Sewerage, **Christ Our Savior Orthodox Church**, 6220 Tanoma Road, Indiana, PA 15701. This proposed facility is in Rayne Township, **Indiana County**.

Description of Proposed Action/Activity: Construction of a small flow sewage treatment facility to serve Christ Our Savior Orthodox Church SFTF.

**WQM Permit No. 5692401-A7**, Sewerage, **Somerset Township Municipal Authority**, P. O. Box 247, 2209 North Center Avenue, Somerset, PA 15501. This proposed facility is in Black Township, **Somerset County**.

Description of Proposed Action/Activity: Construction of a sewage treatment plant sludge dewatering facilities additions to serve SCI—Somerset STP.

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WQM Permit No. 2003411**, Sewerage, **Joshua First**, 20102 Canal Road, Conneautville, PA 16406. This proposed facility is in Summerhill Township, **Crawford County**.

Description of Proposed Action/Activity: To construct and operate a single residence sewage treatment plant.

**WQM Permit No. 1003401**, Sewerage, **Norbert S. Garbisch, III, VicNor Farms, Inc.**, P. O. Box 227, Connoquenessing, PA 16027-0227. This proposed facility is in Forward Township, **Butler County**.

Description of Proposed Action/Activity: Construction/operation of a single residence sewage treatment plant.

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#### **IV. NPDES Stormwater Discharges from MS4 Permit Actions**

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#### **V. NPDES Waiver Stormwater Discharges from MS4 Actions**

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#### **VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

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*Southeast Region: Water Management Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011503004	Edward J. Walsh Sheridan Construction Village of Rose View 1578 McDaniel Dr. West Chester, PA 19380	Chester	Penn Township	East Branch Big Elk Creek HQ-TSF-MF
PAI011503024	Robert Wideman West Vincent Township West Vincent Municipal Complex P. O. Box 163 Birchrunville, PA 19421	Chester	West Vincent Township	Pine Creek/Pickering Creek HQ-TSF
PAI011503026	Harry Oldham Tredyffrin/Easttown School District Valley Forge Middle School 738 First Avenue Berwyn, PA 19312-1779	Chester	Tredyffrin Township	Valley Creek EV Trout Run TSF
PAI011503030	Todd Jorgensen Jorgensen Landscape Design Inc. Jorgensen Landscape Design Bldg. 408 Elkdale Rd. Lincoln University, PA 19353	Chester	Lower Oxford Township	West Branch Elk Creek HQ-TSF-MF
PAI011503027	Veterinary Referral Center Dr. Dietrich Franczuski, DVM 9 Coffman Street Frazier, PA 19355	Chester	East Whiteland Township	Valley Creek EV

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

*Berks County Conservation District, 1238 County Welfare Road, P. O. Box 520, Leesport, PA 19533, (610) 372-4657.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAG2000603011	Patrick Konopelski 18 Sycamore Dr. Reading, PA 19606-9531	Berks	Spring Township	Tributary to Wyomissing Creek CWF
PAG2000603033	Al Lutz Barto Development Inc. P. O. Box J Newtown Square, PA 19073	Berks	Washington Township	Tributary to Swamp Creek CWF-MF
PAG2000603007	Mike Rhodes 813 S. Reading Ave. Boyertown, PA 19512	Berks	Mount Penn Borough	Antietam Creek CWF
PAR10C412	Allen Mickalonis Department of Transportation 1713 Lehigh Street, Allentown, PA 18103-4727	Berks	Hamburg Borough Windsor Township	Schuylkill River WWF-MF

*Lancaster County Conservation District, 1383 Arcadia Road, Room 6, Lancaster, PA 17601, (717) 299-5361.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAG2003603038	Sherman and Walton Inc. 180 Good Dr. Lancaster, PA 17603	Lancaster	East Lampeter Township	Stauffer Run WWF
PAG2003603063	Leacock Township P. O. Box 5589 Intercourse, PA 17534	Lancaster	Leacock Township	Watson Run WWF
PAG2003603073	Atlas Cold Storage 3800 Hempland Rd., Box 478 Mountville, PA 17554	Lancaster	West Hempfield Township	West Branch Little Conestoga TSF

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAG2003603077	Christian School Association of Lancaster 651 Lampeter Rd. Lancaster, PA 17602	Lancaster	West Lampeter Township	Conestoga River WWF

*Perry County Conservation District, P. O. Box 36, New Bloomfield, PA 17068, (717) 582-8988.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAR0050003005	Department of Transportation 2140 Herr St. Harrisburg, PA 17103	Perry	Carroll Township	Shermans Creek

*York County Conservation District, 118 Pleasant Acres Road, Suite E, York, PA 17402, (717) 840-7430.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAG2006703056	David Simon JKLM Corp. 3100 Weedon Street Baltimore, MD 21226	York	Windsor Township	Kreutz Creek WWF
PAG2006703043	Raymond Huch LHR Cable Services 2997 Cape Horn Road Red Lion, PA 17356	York	Dover Township	Fox Run TSF
PAG2006703015	James E. Craft JG Leasing Co. Inc. 2780 York Haven Road P. O. Box 8 York Haven, PA 17370	York	East Manchester Township	UNT to Codorus Creek WWF
PAG2006703007	Stuart Willen LKQ Corp. 1435 Triplett Blvd. Akron, OH 44306	York	Newberry Township	UNT to Susquehanna River WWF

## **VII. Approvals to Use NPDES and/or Other General Permits**

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

### **List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From 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 Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

*General Permit Type—PAG-2*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Concord Township Delaware County	PAR10J231	B & B Homes Bo Erixxson 866 Shavertown Road Boothwyn, PA 19061	West Branch Chester Creek TSF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Radnor Township Delaware County	PAG2002303028	Michael Girman, III Department of Transportation 7000 Geerdes Boulevard King of Prussia, PA 19406	Little Darby Creek WF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
London Grove Township Chester County	PAG2001503057	Wawa, Inc. Gregory Harvey Wawa—London Grove 260 West Baltimore Pike Wawa, PA 19063-5699	East Branch White Clay Creek CWF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
West Bradford Township Chester County	PAG2001503041	West Bradford Township Jack Hines State Police Barracks J 385 Campus Drive Downingtown, PA 19335	Unnamed tributary West Branch Brandywine Creek WWF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
East Caln Township Chester County	PAG2001503016	J. Loew and Associates, Inc. Jack Loew Lowe's Home Center 55 Country Club Dr. Suite 200 Downingtown, PA 19335	Unnamed tributary Valley Creek CWF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Franklin Township Chester County	PAR10-G526	Frank Robino Associates, Inc. Echo Hill 5189 West Woodmill Drive Suite 30 Wilmington, DE 19808	Christina River WWF West Branch White Clay Creek CWF, MF	Southeast Regional Office Suite 6010, Lee Park 555 North Lane Conshohocken, PA 19428 (610) 832-6000
Lehigh County Upper Saucon Township	PAG2003903008	Country Kids Child Care, Inc. 3653 Jacoby Rd. Coopersburg, PA 18036	Saucon Creek CWF	Lehigh County Conservation District (610) 391-9583
Luzerne County Wilkes-Barre Township	PAG2004003023	Rev. Thomas O'Hara Kings College North River Street Wilkes-Barre, PA 18701	Mill Creek CWF	Luzerne County Conservation District (570) 674-7991
Northampton County Moore Township	PAG2004803021	Alan Silfies 415 Edgewood Ave. Lansdale, PA 19446	Hokendauqua Creek CWF	Northampton County Conservation District (610) 746-1971
Northampton County Upper Mt. Bethel Township	PAR10U093R	Dr. Palmer Cottura 45 N. 11th St. Bangor, PA 18013	Allegheny Creek CWF	Northampton County Conservation District (610) 746-1971
Lehigh County North Whitehall Township	PAG2003903005	Mark and Sheryl Panko 3194 Brynwood Dr. Whitehall, PA 18052	Fells Creek CWF	Lehigh County Conservation District (610) 391-9583
Centre County College Township	PAG2001403018	Tractor Supply Co. 935 Benner Pike State College, PA 16801	UNT Spring Creek CWF	Centre County Conservation District 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-66817

## NOTICES

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<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Centre County Benner Township	PAG2001403107	Lyn Lee Farms Shiloh Road Intersection of I-99 State College, PA 16801	Spring Creek CWF	Centre County Conservation District 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-66817
Lycoming County Loyalsock Township	PAG2004103006	Maizelan Meadows Corp. Rick Hannan 2029 Lycoming Creek Road Williamsport, PA 17701	West Mill Creek TSF	Lycoming County Conservation District 542 County Farm Rd. Suite 202 Montoursville, PA 17754 (570) 433-3003
Montour County Anthony Township	PAG204470304	Lawrence and Patricia Kristoff 15 Shades of Death Rd. Great Meadows, NJ 07838	County Line Branch Chillisquaque Creek WWF	Montour County Conservation District 112 Woodbine Lane Suite 2 Danville, PA 17821 (570) 271-1140
Montour County Mayberry Township	PAG2044703005	Michael Copenhaver 91 River Hill Dr. Bloomsburg, PA 17815	UNT Little Roaring Creek CWF	Montour County Conservation District 112 Woodbine Lane Suite 2 Danville, PA 17821 (570) 271-1140
Tioga County Elkland Borough	PAG2005903008	Elkland Borough 105 Parkhurst St. Elkland, PA 16920-1192	Camp Brook Creek WWF	Tioga County Conservation District 29 East Ave. Wellsboro, PA 16901 (570) 724-1801
Tioga County Charleston Township	PAG2005903009	Commonwealth of Pennsylvania Bureau of Engineering 18th and Herr Streets Harrisburg, PA 17120	UNT Charleston Creek WWF	Tioga County Conservation District 29 East Ave. Wellsboro, PA 16901 (570) 724-1801
Union County Buffalo Township	PAG2046003002	Donald Cahall 53 Fairway Dr. Denver, PA 17517	UNT Buffalo Creek CWF	Union County Conservation District 88 Bull Run Crossing Suite 5 Lewisburg, PA 17837 (570) 523-8782
Beaver County Hopewell Township	PAG2000403011	Olivia Estates c/o Morry David 142 Evergreen Drive Aliquippa, PA 15001	Raccoon Creek WWF	Beaver County Conservation District (724) 774-7090
Cambria County Richland Township	PAG2001103015	Donald M. Hemmer 250 Grandview Dr. Fort Mitchell, KY 41017	Solomon Run WWF	Cambria County Conservation District (814) 472-2120
Washington County Fallowfield Township	PAG2006303010	Authority of the Borough of Charleroi 3 McKean Avenue Charleroi, PA 15022	Pigeon Creek WWF	Washington County Conservation District (724) 228-6774
Washington County Peters Township	PAG2006303023	Prashant Gosai 3402 Washington Road, LLC 90 Chamber Plaza Charleroi, PA 15022	Brush Run WWF	Washington County Conservation District (724) 228-6774
Mercer County City of Farrell	PAG2004303004	City of Farrell 500 Roemer Blvd. Farrell, PA 16121	Shenango River WWF	Mercer County Conservation District (724) 662-2242

*General Permit Type—PAG-3*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Telford Borough Montgomery County	PAR800012	Moyer & Son Inc. 113 East Reliance Rd. Souderton, PA 18964	Indian Creek 3E Watershed	Southeast Region Lee Park Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6130
West Norriton Township Montgomery County	PAR800044	Pitt Ohio Express LLC 15 27th St. Pittsburgh, PA 15222	Indian Creek 3E Watershed	Southeast Region Lee Park Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6130
West Pottsgrove Township Montgomery County	PAR800045	Overnite Transportation Co. P. O. Box 1216 Richmond, VA 23218	Schuylkill River 3D Watershed	Southeast Region Lee Park Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6130
East Caln Township Chester County	PAR210007	Main Line Concrete & Supply 1001 Boot Rd. Downingtown, PA 19335	Brandywine Creek 3H Watershed	Southeast Region Lee Park Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6130
East Caln Township Chester County	PAR700009	Highway Materials 1750 Walton Rd. Blue Bell, PA 19422	Valley Creek 3H Watershed	Southeast Region Lee Park Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6130
Bensalem Township Bucks County	PAR800046	Overnite Transportation Co. P. O. Box 1216 Richmond, VA 23218	Delaware River 2E Watershed	Southeast Region Lee Park Suite 6010 555 North Lane Conshohocken, PA 19428 (610) 832-6130
West Finley Township Washington County	PAR206143	Hansen Engineering Inc. 167 Laidley's Run Road West Alexander, PA 15376	Pond Runoff Ditch RH of Buildings	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
South Huntingdon Township Westmoreland County	PAR606192	R & R Auto Recycling 129 Walnut Lane West Newton, PA 15089	Youghiogheny River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Pine Township Mercer County	PAR238331	Reynolds Food Packaging An Alcoa Business 660 Barkeyville Road Grove City, PA 16127	Unnamed tributaries to Wolf Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-4*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
York County North Hopewell Township	PAG043595	Jack E. Bish 5744 Herbst Road Red Lion, PA 17356	UNT Muddy Creek WWF	SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Summerhill Township Crawford County	PAG048899	Joshua First 20102 Canal Road Conneautville, PA 16406	Unnamed tributary to Conneaut Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-10*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office and Telephone No.</i>
Lebanon County East Hanover Township	PAG103517	PPL Gas Utilities Corp. 555 Camargo Road Quarryville, PA 17566	Swatara Creek CWF	SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707

**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).**

*Northeast Region: Water Supply Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Operations Permit** issued to **Saville Rustin Water Co.**, 1103 Pine Ridge Drive, Bushkill, PA 18324, PWS ID 2520096, Lehman Township, **Pike County** on June 5, 2003, for the operation of facilities approved under Construction Permit 5299502.

**Operations Permit** issued to **Shady Lane Mobile Home**, R. R. 1, Box 150-A, Montrose, PA 18801, PWS ID

2580022, Bridgewater Township, **Susquehanna County** on June 10, 2003, for the operation of facilities approved under Construction Permit 5889504.

*Northcentral Region: Water Supply Management Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Permit No. 1400510—Operation, Public Water Supply.**

Applicant	<b>Orchard Creek Partnership c/o Louis Glantz</b> 1901 East College Avenue State College, PA 16801
Township	Benner Township
County	<b>Centre</b>
Type of Facility	PWS—operation of the water system at Hampton Hills Subdivision.
Consulting Engineer	Brennan L. Glantz, P. E. Engineering Projects Incorporated 415 East Balboa Blvd. Newport Beach, CA 92661
Permit to Operate Issued	June 16, 2003

**Permit No. Minor Amendment—Construction, Public Water Supply.**

Applicant	<b>Orchard Creek Partnership c/o Louis Glantz</b> 1901 East College Avenue State College, PA 16801
Township	Benner Township
County	<b>Centre</b>
Type of Facility	PWS—modifications to the Hampton Hills Subdivision water system.
Consulting Engineer	Brennan L. Glantz, P. E. Engineering Projects Incorporated 415 East Balboa Blvd. Newport Beach, CA 92661
Permit to Construct Issued	June 16, 2003

*Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Operations Permit** issued to **Keith A. Dashofy, Owner, K & S Water Service, Inc.**, 102 O'Hare Road, Canonsburg, PA 15317, PWS ID 5636515, Canonsburg, **Washington County** on June 10, 2003, for the operation of facilities approved under Construction Permit 5636515.

**Operations Permit** issued to **Plum Borough Municipal Authority**, 4555 New Texas Road, Pittsburgh, PA 15230, PWS ID 5020041, Plum Borough, **Allegheny County** on June 11, 2003, for the operation of facilities approved under Construction Permit 0200503.

**Operations Permit** issued to **City of Duquesne**, 121 South Second Street, Duquesne, PA 15510, PWS ID 5020012, Duquesne, **Allegheny County** on June 11, 2003, for the operation of facilities approved under Construction Permit 0291501-A2.

#### 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.*

**WA33-224D**, Water Allocation Permit Modification Order, the Department grants Modification Order in response to **Brockway Borough Municipal Authority's** request to expand service area into Horton Township, **Elk County**. This action does not increase allocation quantity and is projected to be sufficient until the year 2030, based on current projected growth rates. Consulting Engineer: Max E. Stoner, P.E., Glace Associates, Inc., 3705 Trindle Road, Camp Hill, PA 17011. Modification Order issued June 16, 2003.

*Southwest Region: Water Supply Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**WA32-142B**, Water Allocations, **Blairsville Municipal Authority**, 203 East Market Street, Blairsville, PA 15717, Derry Township, **Westmoreland County**. The right to withdraw, for public water supply purposes, up to 682,000 gallons per day (gpd) based on a 30-day average, with a 1 day maximum of 860,000 gpd, from Trout Run Reservoir in Derry Township, Westmoreland County and the right to withdraw, for public water supply purposes, up to 576,000 gpd based on a 30-day average, from the Conemaugh River Intake in Derry Township, Westmoreland County. The combined total of water from both sources is not to exceed 682,000 GPD based on a 30-day average.

*Northwest Region: Water Supply Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**WA16-1003**, Water Allocations, **Borough of East Brady**, 502 Ferry Street, Suite 15, East Brady, PA 16028, East Brady Borough, **Clarion County**. Granting the right to an average annual withdrawal of 494,000 gpd and a peak withdrawal of 750,500 gallons from Wells No. 1 and 2 that are influenced by the Allegheny River. Permit issued June 17, 2003.

#### SEWAGE FACILITIES ACT PLAN APPROVAL

**Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a).**

*Southwest Regional Office, Regional Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Ligonier Township	One Municipal Park Drive Ligonier, PA 15658	Westmoreland

**Plan Description:** The approved plan provides for construction of a 400 gallon per day single residence sewage treatment plant to serve a lot owned by James Cunkelman. The property is between Gusey and Four Mile Run in Ligonier Township, Westmoreland County. The proposed discharge point is to Four Mile Run (TSF). 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 applicant.

*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>
Jenks Township	2 Pine Street, Box 436 Marienville, PA 16239	Forest

**Plan Description:** The approved plan provides for additions to the pressurized sewer and conventional sanitary collection and conveyance system and expansion of the Jenks Township WWTP to 0.583 MGD facility. The plan further proposes the construction of sewerage facilities to replace the failing (District One) sand mounds. 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.

#### SEWAGE FACILITIES ACT PLAN DISAPPROVAL

**Plan Disapprovals Granted under the Pennsylvania Sewage Facilities Act.**

*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>
Newberry Township	1915 Old Trail Rd. Etters, PA 17319	York

**Plan Description:** Fetrow Family Trust: The plan consists of a two lot single-family residential subdivision on 34 acres with total proposed sewage flows of 400 gpd to be treated by an individual onlot disposal system. The proposed development is on the west side of Popps Ford Road, approximately 0.45 mile south of Kise Mill Road in Newberry Township, York County.

#### 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 after 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.*

**Gregory Residence**, Lower Providence Township, **Montgomery County**. Jason Plucinski, React Environmental Services, Inc., 6901 Kingsessing Ave., Philadelphia, PA 19142, on behalf of Mr. Gregory, 2869 Eagleville Rd., Audubon, PA 19403, has submitted a Final Report concerning remediation of site soil contaminated with fuel oil no. 2. The report was submitted within 90 days of the release and is intended to document remediation of the site to meet the Statewide Health Standard.

**Abington Shopping Center**, Abington Township, **Montgomery County**. Robert W. Good, Jr., P. G., NTH Consultants, Ltd., 860 Springdale Dr., Exton, PA 19341, on behalf of Abington Associates, LP, 1626 E. Jefferson St., Rockville, MD 20852, has submitted a Final Report concerning remediation of site soil and groundwater contaminated with solvents. The report is intended to document remediation of the site to meet Site-Specific Standards.

**Swede Square Shopping Center**, East Norriton Township, **Montgomery County**. James M. Connor, URS Corp., 2325 Maryland Rd., Willow Grove, PA 19090, on behalf of Genuardi's Market, LP, Attn: Skip Genuardi, 470 Norristown Rd., Suite 300, Blue Bell, PA 19422, has submitted a combined Remedial Investigation Report/Risk Assessment Report/Cleanup Plan concerning the remediation of site soil contaminated with chlorinated solvents and other organics; and groundwater contaminated with chlorinated solvents.

*Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Welles Mill Company, Inc.**, Wysox Township, **Bradford County**. Chambers Environmental Group, Inc., on behalf of Welles Mill Company, Inc., R. R. 2, Box 1, Towanda, PA 18848, has submitted a Final Report concerning soil contaminated with no. 2 fuel oil. This Final Report is intended to demonstrate remediation of this site to meet the Statewide Health Standard.

**Bernardi Italian Foods**, Town of Bloomsburg, **Columbia County**. Keystone Environmental Services, Inc., on behalf of Bernardi Italian Foods, 595 West 11th Street, Bloomsburg, PA 17815, has submitted a Final Report concerning soil and groundwater contaminated with other organics. This Final Report is intended to demonstrate remediation of this site to meet the Statewide Health Standard. See additional information in the Applications section of this *Pennsylvania Bulletin*.

## 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 and the administration 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 its final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or 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. 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. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program Manager in the Department Regional Office after which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate Regional Office listed. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428.*

**HiLine Storage Systems/Seiz Corp.**, East Rockhill Township, **Bucks County**. Douglass B. Schott, Walter B. Satterthwaite Associates, Inc., 720 Old Fern Rd., West Chester, PA 19380, on behalf of Frederick Seiz, Seiz Corp./HiLine Storage Systems, HiLine Dr. and E. Ridge Rd., Perkasio, PA 18944 has submitted a Remedial Investigation Report concerning the remediation of site soil contaminated with chlorinated solvents, lead and other organics and site groundwater contaminated with chlorinated solvents, MTBE, other organics and unleaded gasoline. The report was approved by the Department on June 3, 2003.

**Melchiorre Construction Co., Park Site**, Phoenixville Borough, **Chester County**. Lawrence W. Bily, RT Environmental Services, Inc., 215 W. Church Rd., King of Prussia, PA 19406, has submitted a Cleanup Plan concerning remediation of site soil contaminated with heavy metals. The plan was approved by the Department on June 12, 2003.

**Wawa, Inc. (Market No. 163)**, Yeadon Borough, **Delaware County**. Joseph W. Standen, Jr., Leggette, Brashears & Graham, Inc., 426 Brandywine Parkway, West Chester, PA 19380, on behalf of Wawa Inc., 260 W. Baltimore Pike, Wawa, PA 19063-5699, has submitted a Final Report concerning remediation of site groundwater contaminated with BTEX. The report was withdrawn.

**Ortho-McNeil Pharmaceutical**, Lower Gwynedd Township, **Montgomery County**. Daniel P. Claycomb, P. G., Environmental Standards, Inc., 1140 Valley Forge Rd., P. O. Box 810, Valley Forge, PA 19482-0810, has submitted a Final Report concerning the remediation of site soil contaminated with fuel oil no. 2. The report was submitted within 90 days of the release of the contaminant. The report documented remediation of the site to meet the Statewide Health Standard and was approved by the Department on June 5, 2003.

**Abington Memorial Hospital**, Abington Township, **Montgomery County**. Vincent M. Carbone, P. G., Lawler, Matusky & Skelly Engineers, LLP, 609 Hamilton Mall, Allentown, PA 18101, on behalf of Abington Memorial Hospital, Attn: Frank Jester, 1200 Old York Rd., Abington, PA 19001, has submitted a Final Report concerning remediation of site soil contaminated with fuel oil no. 6. The report documented remediation of the site to meet the Statewide Health Standard and was approved by the Department on June 12, 2003.

*Northcentral Region: Environmental Cleanup Program Manager, 208 West Third Street, Williamsport, PA 17701.*

**Mike Menapace Property**, Sugarloaf Township, **Columbia County**. Quad 3 Group, Inc., on behalf of Mike Menapace, 500 Church Road, Mountaintop, PA 18707, has submitted a Final Report concerning site soil and groundwater contaminated with no. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on June 4, 2003.

**Henderson Street Laundromat, Inc. (KC Video)**, City of Lock Haven, **Clinton County**. Earth Tech, Inc., on behalf of Montour Oil Service Company and Sunoco, Inc., 5733 Butler Street, Pittsburgh, PA 15201, has submitted a Remedial Investigation Report concerning

soil and groundwater contaminated with leaded gasoline, lead, MTBE and unleaded gasoline. This report was submitted in partial fulfillment of the Site-Specific Standard and was approved by the Department on June 9, 2003.

#### RESIDUAL WASTE GENERAL PERMITS

**Permit reissued 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 No. WMGR028M029. Pennsy Supply, Inc.**, 1001 Paxton Street, Harrisburg, PA 17104-3331. General Permit Number WMGR028M041 was originally issued to Evans Asphalt Co., Inc., P. O. Box 1087, Wilkes-Barre, PA 18703 for the beneficial use of baghouse fines and scrubber pond precipitates, generated at Dorrance and Keith Street plants in Hanover and Dorrance Townships, **Luzerne County** as an aggregate in roadway construction or as an ingredient or component in cement or asphalt products.

Based on a notification of a change of ownership, the beneficial use of baghouse fines and scrubber pond precipitates produced at these two plants is now under the ownership and management of Pennsy Supply, Inc. After a review of the information submitted, the Department determined that it was appropriate to include these beneficial use activities under the General Permit Number WMGR028M029 previously issued to Pennsy Supply, Inc. Notice is given of the reissuance of the General Permit Number WMGR028M029 granting Pennsy Supply, Inc. the beneficial use of baghouse fines and scrubber pond precipitates generated at these two plants as specified in the general permit. Central Office approved the reissuance of this general permit on June 11, 2003.

Persons interested in reviewing the general permit may contact 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, (717) 787-7381. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

#### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Permit renewal 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 regulations to operate solid waste processing or disposal area or site.**

*Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701.*

**Permit No. 101323, City of Sunbury**, 225 Market Street, Sunbury, PA 17801-3413, **Northumberland County**. The permit renewal was received by the Williamsport Regional Office on June 3, 2003.

Persons interested in reviewing the permit may contact John C. Hamilton, P. E., Facilities Manager, Williamsport

Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3653. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

**Permit modification issued under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and regulations to operate solid waste processing or disposal area or site.**

*Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701.*

**Permit No. 301626. White Pines Corporation**, 320 Godshall Dr., Harleysville, PA 19438, Pine Township, **Columbia County**. A permit modification for the installation and operation of a leachate pretreatment facility was issued by the Williamsport Regional Office on June 10, 2003.

Persons interested in reviewing the permit may contact John C. Hamilton, P. E., Facilities Manager, Williamsport Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-3653. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

**MUNICIPAL AND RESIDUAL WASTE TRANSPORTER AUTHORIZATION**

**Issued applications for Municipal and Residual Waste Transporter Interim Authorization received under the Waste Transportation Safety Act (27 Pa.C.S. §§ 6201—6209) and regulations to transport municipal or residual waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Municipal and Residual Waste, P. O. Box 8472, Harrisburg, PA 17105-8472.*

**Hanna Transfer Company North**, P. O. Box 1148, 1300 West First St., Oil City, PA 16301. Authorization No. WH4720. Effective May 29, 2003.

**OB Trucking d/b/a Omer Boduroglu/Ozbay Cevdet**, 5228 Highway 130, Bordentown, NJ 08505. Authorization No. WH4721. Effective May 29, 2003.

**I N H Relocat Services Inc.**, 285 Green St., Woodbridge, NJ 07095. Authorization No. WH4722. Effective May 29, 2003.

**Grace C. Bruce**, Apt. 7, 100 Grant Ave., Bronx, NY 10456. Authorization No. WH4723. Effective May 29, 2003.

**Edilson Osorno**, 151 Brook Drive, Dover NJ 07801. Authorization No. WH4724. Effective May 29, 2003.

**Val H. Linton**, Apt. 7106, 9 Milford Lane, Suffern, NY 10901. Authorization No. WH4725. Effective May 29, 2003.

**Steven C. May**, 5670 Hyndman Road, Buffalo Mills, PA 15534. Authorization No. WH4596. Effective June 2, 2003.

**Galbreath Trucking d/b/a James T. Galbreath**, 20 Trebing Lane, Willingboro, NJ 08046. Authorization No. WH4731. Effective June 2, 2003.

**Omega Contracting Service Inc.**, 235 Grandview Ave., Edison, NJ 08837. Authorization No. WH4732. Effective June 2, 2003.

**Lanse Gates Trucking & Repair**, 301 Gates Mountain Road, Howard, PA 16841. Authorization No. WH4733. Effective June 2, 2003.

**Frederick W. Heim**, 277 North St., West Creek, NJ 08092. Authorization No. WH4734. Effective June 2, 2003.

**Herbert W. Barnes**, 156 McQuaid St., Franklin, PA 16323. Authorization No. WH4735. Effective June 2, 2003.

**Harry Hildenbrand**, R. R. 2 Box 601, Ruffsedale, PA 15679. Authorization No. WH4736. Effective June 2, 2003.

**David A. Englert Inc.**, 1199 Clifton Road, Bethel Park, PA 15102. Authorization No. WH4448. Effective June 2, 2003.

**Jensco Construction**, 4690 List Road, Red Lion, PA 17356. Authorization No. WH4651. Effective June 2, 2003.

**Carroll W. Diefenbach Construction**, 3491 Ridge Road, New Columbia, PA 17856-9770. Authorization No. WH4748. Effective June 2, 2003.

**Paul L. Fahnstock**, 5293 Molly Pitcher Highway South, Chambersburg, PA 17201. Authorization No. WH4750. Effective June 2, 2003.

**Harold J. Pruitt**, 9639 SR 224, Deerfield, OH 44411. Authorization No. WH4751. Effective June 2, 2003.

**Juan C. Boggio**, 63 Huber St., Secaucus, NJ 07094. Authorization No. WH4754. Effective June 2, 2003.

**BFI Waste Services, LLC**, 1420 New York Ave., Wilmington, DE 19801. Authorization No. WH4755. Effective June 2, 2003.

**North Branch Transfer, Inc.**, P. O. Box 3775, 100 Rose Street, Williamsport, PA 17701. Authorization No. WH2193. Effective April 24, 2003.

**Raymond C. Heim**, 2516 Craley Road, Wrightsville, PA 17368. Authorization No. WH3050. Effective May 28, 2003.

**Mark Hepford**, 1422 Melrose Avenue, Sharon Hill, PA 19079. Authorization No. WH3866. Effective May 1, 2003.

**Erwin Excavating**, 131 Wolf Run Road, Bradford, PA 16701-0131. Authorization No. WH4005. Effective May 7, 2003.

**Denise A. Berardi**, 2231 South Croskey Street, Philadelphia, PA 19145. Authorization No. WH4006. Effective May 7, 2003.

**Geo Drain, Inc.**, P. O. Box 85, 4041 Jordan Street, South Heights, PA 15081. Authorization No. WH4074. Effective May 12, 2003.

**C. K. Radcliff & Sons, Inc.**, 325 Birch Avenue, Horsham, PA 19044. Authorization No. WH4221. Effective May 16, 2003.

**Goodman Brothers Services, Inc.**, 286 High Street, Bradford, PA 16701. Authorization No. WH4222. Effective May 16, 2003.

**Delta Contractors & Design, Inc.**, Suite 3, 15952 Route 322, Clarion, PA 16214-6340. Authorization No. WH4225. Effective May 16, 2003.

**R. J. Corcetti Corporation**, 435 South 2nd Avenue, Clarion, PA 16214. Authorization No. WH4226. Effective May 16, 2003.

**P. A. Mangione Trucking, Inc.**, 6133 River Road, Pittston, PA 18640-1325. Authorization No. WH4227. Effective May 16, 2003.

**P. Agnes, Inc.**, 2101 Penrose Avenue, Philadelphia, PA 19145. Authorization No. WH4228. Effective May 16, 2003.

**Stong Trucking**, 129 Meadowood Drive, Lewistown, PA 17044. Authorization No. WH4229. Effective May 16, 2003.

**D. L. Claire, Inc.**, 2209 Kingsford Lane, Atco, NJ 08004. Authorization No. WH4230. Effective May 16, 2003.

**Beres Roofing & Siding, Inc.**, 303-B Airport Boulevard, Doylestown, PA 18901-1001. Authorization No. WH4277. Effective May 28, 2003.

**Beres Construction Company, Inc.**, 303-B Airport Boulevard, Doylestown, PA 18901-1001. Authorization No. WH4278. Effective May 28, 2003.

**George J. Miller d/b/a Rocky's Hauling**, 159 Knox Avenue, Pittsburgh, PA 15210. Authorization No. WH4279. Effective May 28, 2003.

**Tonawanda Tank Transportation Services, Inc.**, 1140 Military Road, P. O. Box H, Buffalo, NY 14217-0312. Authorization No. WH4280. Effective May 28, 2003.

**David A. Marble**, 1122 Whitehaven Road, Grand Island, NY 14072. Authorization No. WH4281. Effective May 28, 2003.

**Bruce E. Yocum**, 6095 Route 16, Franklinville, NY 14737. Authorization No. WH4282. Effective May 28, 2003.

**Bill Heck Excavating**, 151 Sunset Hill Road, Boyertown, PA 19512-8138. Authorization No. WH4283. Effective May 28, 2003.

**Edward Yesik Trucking**, 6374 Opossum Lane, Slatington, PA 18080. Authorization No. WH4284. Effective May 28, 2003.

**David L. Schmalz**, 407 West Grant Street, Houston, PA 15342-1411. Authorization No. WH4286. Effective May 28, 2003.

**Zeigler's Storage & Transfer, Inc.**, P. O. Box 140, 1235 Ritner Highway, Carlisle, PA 17013-0140. Authorization No. WH4287. Effective May 28, 2003.

**Fiber Conversion Transport, Ltd.**, 15 East Elm Street, Broadalbin, NY 12025. Authorization No. WH4288. Effective May 28, 2003.

**Loebrich Contracting, Inc.**, 1830 Frankstown Road, Johnstown, PA 15902. Authorization No. WH4289. Effective May 28, 2003.

**NLP Trucking, Inc.**, 1043 Elmont Road, Valley Stream, NY 11580. Authorization No. WH4292. Effective May 28, 2003.

**Complete Trucking, Inc.**, 60 Jacobus Avenue, South Kearney, NJ 07032. Authorization No. WH4293. Effective May 28, 2003.

**A. S. A. P. Construction**, 46 Buck Road, East Brunswick, NJ 08816. Authorization No. WH4294. Effective May 28, 2003.

**Mornak Excavating, Inc.**, 29 Pennsylvania Boulevard, Monessen, PA 15062-2243. Authorization No. WH4296. Effective May 28, 2003.

**Zimmer Equipment, Inc.**, P. O. Box 236, Clarksburg, NJ 08510. Authorization No. WH4297. Effective May 28, 2003.

**Modern Landscapes, Inc.**, 2912 Jenkintown Road, Glenside, PA 19038. Authorization No. WH4298. Effective May 28, 2003.

**E. R. Linde Construction Corporation**, R. R. 6, Box 6825, Honesdale, PA 18431-9655. Authorization No. WH4299. Effective May 28, 2003.

**Terry Jacobson**, R. R. 4, Box 1109, Westfield, PA 16950. Authorization No. WH4300. Effective May 28, 2003.

**Affordable Roll-off, Inc.**, 5543 Northridge Road, Madison, OH 44057. Authorization No. WH4358. Effective May 21, 2003.

**Linval L. Brown**, 5805 Pemberton Street, Philadelphia, PA 19143. Authorization No. WH4480. Effective May 16, 2003.

**Kenneth R. Price**, 1002 West Street, Everett, PA 15537. Authorization No. WH4505. Effective May 21, 2003.

**James Corporation d/b/a James Construction**, 243 East Main Street, Suite 203, Carnegie, PA 15106. Authorization No. WH4622. May 28, 2003.

**Delco Metals, Inc.**, 3100 North 2nd Street, Philadelphia, PA 19133. Authorization No. WH4686. Effective May 21, 2003.

**E-Z Run Enterprises, Inc.**, 845 Bergen Avenue, Suite 344, Jersey City, NJ 07306. Authorization No. WH4698. Effective May 28, 2003.

**Dirtwork, Inc.**, Nafe Sawmill Road, 4337, Glen Rock, PA 17327. Authorization No. WH4857. Effective June 12, 2003.

**George Leone III**, 1398 Treasure Lake, DuBois, PA 15801. Authorization No. WH1051. Effective June 12, 2003.

**Road Tek Transportation Inc.**, 18 Cedar Terrace, Vernon, NJ 07462. Authorization No. WH4833. Effective June 12, 2003.

**Sukhminder Singh**, 85-71 144 St., Jamaica, NY 11435. Authorization No. WH4837. Effective June 12, 2003.

**Randy S. Keith**, R. R. 2 Box 248B, Curwensville, PA 16833. Authorization No. WH4838. Effective June 12, 2003.

**A. S. Formica Company**, 226 West Church Street, Downingtown, PA 19335. Authorization No. WH3692. Effective June 12, 2003.

**O'Brien & Sons, Inc.**, 163 Bustleton Pike, Churchville, PA 18966-1680. Authorization No. WH4530. Effective June 12, 2003.

**West Whiteland Township**, 222 North Pottstown Pike, Exton, PA 19341-2208. Authorization No. WH4531. Effective June 12, 2003.

**Allegheny Valley School**, 1996 Ewings Mill Road, Coraopolis, PA 15108. Authorization No. WH4532. Effective June 12, 2003.

**Freedom Disposal LLC**, 503 Shue Drive, Newark, DE 19713. Authorization No. WH4538. Effective June 12, 2003.

**Knorr Hauling**, 512 Second Street, Nescopeck, PA 18635. Authorization No. WH4540. Effective June 12, 2003.

**Zerbe Township, Northumberland County**, 800 Mahanoy Street, Trevorton, PA 17881-1106. Authorization No. WH4541. Effective June 12, 2003.

**Sly Transport, Inc.**, 2050 Lincoln Highway East, Lancaster, PA 17602. Authorization No. WH4542. Effective June 12, 2003.

**Korpics Contracting**, 3811 Cedar Drive, Walnutport, PA 18088-9404. Authorization No. WH4543. Effective June 12, 2003.

**Designer Landscaping & Land Care, Inc.**, P. O. Box 20113, Lehigh Valley, PA 18002-0113. Authorization No. WH4545. Effective June 12, 2003.

**T. W. Hurd, Inc.**, P. O. Box 262, Spring House, PA 19477-0262. Authorization No. WH4546. Effective June 12, 2003.

**Loyalsock Township, Lycoming County**, 2501 East 3rd Street, Williamsport, PA 17701-4096. Authorization No. WH4547. Effective June 12, 2003.

**Emery Tree Service, Inc.**, P. O. Box 111533, Pittsburgh, PA 15238. Authorization No. WH4548. Effective June 12, 2003.

**M. Smith Transport**, 1517 West Lincoln Highway, Langhorne, PA 19047. Authorization No. WH4549. Effective June 12, 2003.

**Marona Construction Company**, P. O. Box 283, 100 Trewigtown Road, Colmar, PA 18915. Authorization No. WH4550. Effective June 12, 2003.

**Carole Hochman Designs, Inc.**, 801 Forseman Street, Williamsport, PA 17701. Authorization No. WH4551. Effective June 12, 2003.

**Barr International, Inc.**, 2407 North Salisbury Boulevard, P. O. Box 1777, Salisbury, MD 21801. Authorization No. WH4553. Effective June 12, 2003.

**Clearwater Fiber Company, Inc.**, P. O. Box 503, Turners Falls, MA 01376. Authorization No. WH4554. Effective June 12, 2003.

**Timothy D. Leonard**, R. D. 3, Box 163B, Columbia Cross Roads, PA 16914-9583. Authorization No. WH4556. Effective June 12, 2003.

**Laurel Construction Corp.**, P. O. Box 203, Lowber, PA 15660-0203. Authorization No. WH4557. Effective June 12, 2003.

**L & C Europa Contracting Co., Inc.**, 14 Circle Avenue, Clifton, NJ 07011. Authorization No. WH4614. Effective June 13, 2003.

**Soult Wholesale Co.**, 405 Latimer Street, P. O. Box 1112, Clearfield, PA 16830-1112. Authorization No. WH4615. Effective June 13, 2003.

**Freeport Transport Industries, Inc.**, Drawer A, 1200 Butler Road, Freeport, PA 16229-0301. Authorization No. WH4616. Effective June 13, 2003.

**Ron Bartholomew Concrete & Excavating Co., Inc.**, P. O. Box 509, 3460 Trewigtown Road, Colmar, PA 18915. Authorization No. WH4641. Effective June 13, 2003.

**Bob Delozier Installations & Maintenance**, 715 Arlington Avenue, Jeannette, PA 15644. Authorization No. WH4642. Effective June 13, 2003.

**Manbeck Construction Co.**, P. O. Box 123, Mifflintown, PA 17059. Authorization No. WH4643. Effective June 13, 2003.

**East Hills Enterprises**, 1672 Solomon Run Road, Johnstown, PA 15904. Authorization No. WH4645. Effective June 13, 2003.

**Marvi Trucking Corporation**, 20-14 Crescent Street 1A, Astoria, NY 11105. Authorization No. WH4647. Effective June 13, 2003.

**Hade's Excavating**, 479 Three Hill Road, Spring Grove, PA 17362-8664. Authorization No. WH4649. Effective June 13, 2003.

**MAX Environmental Technologies**, 1815 Washington Road, Pittsburgh, PA 15241. Authorization No. WH4650. Effective June 13, 2003.

**George W. Hoy & Son, Inc.**, 559 High Street, Lock Haven, PA 17745. Authorization No. WH4653. Effective June 13, 2003.

**Gary L. Gallopo**, 126 Chingarora Avenue, Keyport, NJ 07735. Authorization No. WH4654. Effective June 13, 2003.

**Randy B. Hassler**, 1030 Monocacy Street, Bethlehem, PA 18018. Authorization No. WH4655. Effective June 13, 2003.

**Comunale Construction Co., Inc.**, 622 Fox Gap Road, Bangor, PA 18013-5833. Authorization No. WH4657. Effective June 13, 2003.

**W. T. Kratovil, Inc.**, 466 Castle Shannon Boulevard, Pittsburgh, PA 15234-1418. Authorization No. WH4658. Effective June 13, 2003.

**National Freight, Inc.**, 71 West Park Avenue, Vineland, NJ 08360. Authorization No. WH4659. Effective June 13, 2003.

**Appliance Warehouse Inc.**, 523 Bingham Street, Pittsburgh, PA 15203. Authorization No. WH3909. Effective June 9, 2003.

**ECC Inc. Eagle Construction Company**, P. O. Box 310, Greencastle, PA 17225. Authorization No. WH4558. Effective June 11, 2003.

**German Township, Fayette County**, 2 Long Street, McClellandtown, PA 15458. Authorization No. WH4559. Effective June 11, 2003.

**C. D. Kaller Inc.**, 422 Davisville Road, Willow Grove, PA 19090-2729. Authorization No. WH3524. Effective June 11, 2003.

**G M C Express Inc.**, 8 William Street, Kearny, NJ 07032. Authorization No. WH4561. Effective June 11, 2003.

**South Hills Movers**, 3132 Industrial Boulevard, Bethel Park, PA 15102. Authorization No. WH4564. Effective June 11, 2003.

**Steven S. Mainwaring**, 247 Baker Road, Coatesville, PA 19320. Authorization No. WH4565. Effective June 11, 2003.

**Gracies Trucking**, 3850 County Road A, Liberty Center, OH 43532. Authorization No. WH4566. Effective June 11, 2003.

**Note Brothers Construction Inc.**, 9 Wychwood Lane, Langhorne, PA 19047. Authorization No. WH4567. Effective June 11, 2003.

**John E. Smith**, 11261 Lake Pleasant Road, Union City, PA 16438. Authorization No. WH4571. Effective June 11, 2003.

**Donald E. Keith**, 805 North State Street, Ephrata, PA 17522-2163. Authorization No. WH4574. Effective June 11, 2003.

**Christopher B. Colescott**, 108 Ridge Point, Northumberland, PA 17857. Authorization No. WH4577. Effective June 11, 2003.

**Derricott Construction**, 411 Kring Street, Johnstown, PA 15904. Authorization No. WH4579. Effective June 11, 2003.

**K & W Fisher**, 10th and Norris Street, Saxton, PA 16678-1112. Authorization No. WH4580. Effective June 11, 2003.

**Shaw Steeple Jacks Inc.**, 2710 Bedford Street, Johnstown, PA 15904-1715. Authorization No. WH4581. Effective June 11, 2003.

**Millcreek Township, Erie County**, 3608 West 26th Street, Erie, PA 16506-2037. Authorization No. WH4584. Effective June 11, 2003.

**Di Bucci & Sons LLC**, 403 Spencer Avenue Extended, Glenshall, PA 15116. Authorization No. WH4583. Effective June 13, 2003.

**Robert M. Benner**, 624 3rd Avenue, Bethlehem, PA 18018. Authorization No. WH4585. Effective June 13, 2003.

**Fidler Brothers Construction Company**, 2052 Panther Valley Road, Pottsville, PA 17901. Authorization No. WH4586. Effective June 13, 2003.

**Steve Catranel Construction Company Inc.**, 901 Elizabeth Street, Pittsburgh, PA 15221-3947. Authorization No. WH4587. Effective June 13, 2003.

**D. B. Construction**, 4 Lake Road, Selinsgrove, PA 17870. Authorization No. WH4588. Effective June 13, 2003.

**Ralph J. Meyer Company**, 3101 Smallman Street, Pittsburgh, PA 15201-1424. Authorization No. WH4589. Effective June 13, 2003.

**R. K. S. Trucking Corporation**, 6452 Landsdowne Avenue, 3rd Floor, Philadelphia, PA 19151. Authorization No. WH4590. Effective June 13, 2003.

**R. Musselman Construction**, 520 Upper Clear Road, Claysburg, PA 16625-0403. Authorization No. WH4593. Effective June 13, 2003.

**Thomas S. Stem Trucking**, 140 Wilson Street, Johnstown, PA 15906-1936. Authorization No. WH4594. Effective June 13, 2003.

**Jim Dewire & Sons**, 1305 West Macada Road, Bethlehem, PA 18017. Authorization No. WH4599. Effective June 13, 2003.

**M & M Transport & Shipping LLC**, 226 Jefferson Avenue, North Plainfield, NJ 07060. Authorization No. WH4600. Effective June 13, 2003.

**Lynch Brothers Construction**, 752 Collier Avenue, Carnefie, PA 15106. Authorization No. WH4601. Effective June 13, 2003.

**Ringler Restoration Inc.**, 33 Jefferson Avenue, Greensburg, PA 15601. Authorization No. WH4602. Effective June 13, 2003.

**Jim Foresman Excavating & Septic Service Inc.**, 16676 Route 15, Allenwood, PA 17810-9139. Authorization No. WH4604. Effective June 13, 2003.

**G. Guizzetti & Sons**, 722 Penn Green Road, P. O. Box 364, Landenburg, PA 19350. Authorization No. WH4605. Effective June 13, 2003.

**William J. Fogelman**, 2249 Musser Lane, Muncy, PA 17756-8348. Authorization No. WH4606. Effective June 13, 2003.

**Middletown Township, Bucks County**, 3 Municipal Way, Langhorne, PA 19047-3424. Authorization No. WH4607. Effective June 13, 2003.

**Norman B. Dixon**, 3075 Shawville Highway, Woodland, PA 16881. Authorization No. WH4477. Effective June 10, 2003.

**Zhullin Enterprises, Inc.**, 739 Newark Avenue, 3rd Floor, Jersey City, NJ 07306. Authorization No. WH4478. Effective June 10, 2003.

**Romulo Marcillo**, 199 Quincy Avenue, Kearny, NJ 07032. Authorization No. WH4479. Effective June 10, 2003.

**Thomas L. Casper Trucking**, R. R. 2, Box 2298, Waymart, PA 18472-9664. Authorization No. WH4481. Effective June 10, 2003.

**Halabi Samir**, 748 Harrison Avenue, 2nd Floor, Harrison, NJ 07029. Authorization No. WH4482. Effective June 10, 2003.

**Bettors Company, Inc.**, 1306 Virginia Street, McKeesport, PA 15135-2040. Authorization No. WH4483. Effective June 10, 2003.

**Norwin Leasing & Clerical, Inc.**, 13030 Veronica Lane, North Huntingdon, PA 15642. Authorization No. WH4484. Effective June 10, 2003.

**Louis Cordova**, Victory Hill East, Apartment A-3, Dover, NJ 07801. Authorization No. WH4496. Effective June 10, 2003.

**Lowe Construction, Inc.**, 1081 Felton Road, Red Lion, PA 17356. Authorization No. WH4498. Effective June 10, 2003.

**Jackson Township, Cambria County**, Jackson Township Municipal Building, 513 Pike Road, Johnstown, PA 15909-4209. Authorization No. WH4499. Effective June 10, 2003.

**Stopper Asphalt**, P. O. Box 389, Montoursville, PA 17754. Authorization No. WH4501. Effective June 10, 2003.

**Diversified Constructors, Inc.**, 430 Game Farm Road, Schwenksville, PA 19473-1635. Authorization No. WH4502. Effective June 10, 2003.

**Ray Showman, Jr. Excavating, Inc.**, P. O. Box 646, Waterford, PA 16441-0646. Authorization No. WH4504. Effective June 10, 2003.

**Carl J. Visnesky**, 3908 Homestead-Duquesne Road, West Mifflin, PA 15122. Authorization No. WH4507. Effective June 10, 2003.

**Zadravec Contractors, Inc.**, 1170 C, Wayne Ave., Indiana, PA 15701-3561. Authorization No. WH4508. Effective June 10, 2003.

**Fredrick C. Meier, Jr.**, 341 Courter Avenue, Mineral Point, PA 15942. Authorization No. WH4509. Effective June 10, 2003.

**Baird Construction**, 152 Saint Clair Street, Mount Pleasant, PA 15666. Authorization No. WH4510. Effective June 10, 2003.

**Galbally Landscaping, Inc.**, 985 Davisville Road, Willow Grove, PA 19090. Authorization No. WH4511. Effective June 10, 2003.

**Robert Feaster Corporation**, P. O. Box 47, Northumberland, PA 17857. Authorization No. WH4512. Effective June 10, 2003.

**Piper Group, Inc.**, 103 Randt's Mill Road, Pipersville, PA 18947. Authorization No. WH4513. Effective June 10, 2003.

**Dremel's Oil**, Route 120, P. O. Box 492, North Bend, PA 17760. Authorization No. WH4514. Effective June 10, 2003.

**James A. Vesci**, 215 Girard Avenue, Horsham, PA 19044. Authorization No. WH4515. Effective June 10, 2003.

**States Realty**, 1222 Hope Hollow Road, Carnegie, PA 15106. Authorization No. WH4516. Effective June 10, 2003.

**Lorenzon Brothers Company**, 220 East Springfield Avenue, Philadelphia, PA 19118. Authorization No. WH4517. Effective June 10, 2003.

**Allied Equipment Sales & Rental**, 2937 South Pike Avenue, Allentown, PA 18103. Authorization No. WH4518. Effective June 10, 2003.

**Michael D. Hooper**, 8 Carbon Street, Pine Grove, PA 17963. Authorization No. WH4519. Effective June 10, 2003.

**Kevin S. Stair**, 158 Treasure Road, Hyndman, PA 15545. Authorization No. WH4520. Effective June 10, 2003.

**Sodano Contracting Company**, Suite 100, 1816 Englishtown Road, Old Bridge, NJ 08857-3993. Authorization No. WH4521. Effective June 10, 2003.

**Bob Billman, Building Contractor**, 2433 Centerport Road, Mohrsville, PA 19541. Authorization No. WH4522. Effective June 10, 2003.

**Denied application for Municipal and Residual Waste Transporter (Interim Final Transfer Renewal) Authorization received under the Waste Transportation Safety Act and regulations to transport municipal or residual waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Municipal and Residual Waste, P. O. Box 8472, Harrisburg, PA 17105-8472.*

**Scout Transportation Services, Inc.**, P. O. Box 164064, Fort Worth, TX 76161. Authorization No. WH3788. Effective May 30, 2003.

## 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.*

**AQ-SE-0016: Allan A. Myers, L. P.** (Beidler Road, King of Prussia, PA 19406) on June 12, 2003, to operate portable crushers and screening unit in Upper Merion Township, **Montgomery County**.

**23-302-136GP: Swarthmore College** (500 College Avenue, Swarthmore, PA 19081) on June 17, 2003, to operate three new boilers in Swarthmore Borough, **Delaware County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702.*

**GP3-36-03042: Haines and Kibblehouse, Inc.** (P. O. Box 196, Skippack, PA 19474) on June 10, 2003, to operate a portable nonmetallic mineral processing plant under GP3 in Fulton Township, **Lancaster County**.

**GP4-67-03116A: Surtech Industries, Inc.** (915 Borom Road, York, PA 17404) on June 12, 2003, to operate a burn off oven under GP4 in the City of York, **York County**.

**Plan Approvals Issued under the Air Pollution Control Act 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.*

**46-0037Q: Cabot Supermetals** (County Line Road, Boyertown, PA 19512) on June 12, 2003, to operate a wet dust collector in Douglass and Colebrookdale Townships, **Montgomery and Berks Counties**.

**09-0064: CRC Industries, Inc.** (885 Louis Drive, Warminster, PA 18974) on June 12, 2003, to operate a mixing vessels and process fill lines in Warminster Township, **Bucks County**.

**15-0029D: Dopaco, Inc.** (241 Woodbine Road, Downingtown, PA 19335) on June 13, 2003, to operate a 10 color flexographic press in Downingtown Borough, **Chester County**.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**39-309-059: Lafarge North America** (5160 Main Street, Whitehall, PA 18052) on June 10, 2003, to install a cement slag blending system and associated air cleaning devices at their Whitehall Plant in Whitehall Township, **Lehigh County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Ronald Davis, New Source Review Chief, (717) 705-4702.*

**38-05023B: Pennsy Supply, Inc.** (P. O. Box 3331, Harrisburg, PA 17104-3331) on June 11, 2003, for construction of a shingle shredder controlled by wet suppression in South Lebanon Township, **Lebanon County**.

**Plan Approval revisions issued including extensions, minor modifications and transfers of ownership under the Air Pollution Control Act 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.*

**15-0064A: QVC, Inc.** (1200 Wilson Drive, West Chester, PA 19380) on June 16, 2003, to operate three emergency generators in West Goshen Township, **Chester County**.

**09-0009B: Webcraft, LLC** (4371 County Line Road, Chalfont, PA 18914) on June 16, 2003, to operate a web offset press in New Britain Township, **Bucks County**.

**09-0123: Better Materials Corp.** (262 Quarry Road, Ottsville, PA 18972) on June 16 2003, to operate a batch asphalt plant in Nockamixon Township, **Bucks County**.

**23-0001P: Sunoco, Inc. (R & M)** (Delaware Ave. and Green Street, Marcus Hook, PA 19061) on June 17, 2003, for operation of low NOx burners for RACT No. 6 boiler in Marcus Hook Borough, **Delaware County**.

**23-0014C: Kimberly Clark PA LLC** (Front Street and Avenue of the States, Chester, PA 19013) on July 1, 2003, for operation of a wet scrubber dust control system in City of Chester, **Delaware County**.

**46-0060A: Department of Public Welfare** (1001 East Sterigere Street, Norristown, PA 19401) on June 17, 2003, for operation of two natural gas no. 2 oil fired boilers in Norristown Borough and West Norriton Township, **Montgomery County**.

**09-0048A: H and K Materials—Division of Haines & Kibblehouse** (300 Skunk Hollow Road, Chalfont, PA 18914) on June 17, 2003, for operation of a batch asphalt plant in Hilltown Township, **Bucks County**.

**46-0036F: Visteon Systems LLC** (2750 Morris Road, Lansdale, PA 19446) on June 17, 2003, for operation of a wave solder no. 13 in Worcester Township, **Montgomery County**.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**48-328-006: Connectiv Bethlehem, LLC** (P. O. Box 6066, Newark, DE 19714-6066) to facilitate the shake-down of unit 6 in simple cycle mode at their facility in Bethlehem and Lower Saucon Township, **Northampton County**. The Plan Approval was extended.

**35-309-004: Weissker Manufacturing Inc.** (60 Dundaff Street, Carbondale, PA 18407) to construct a glass bead production system and an associated air cleaning devices at their facility in Carbondale, **Lackawanna County**. The Plan Approval has been extended.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.*

**49-00009A: Mohawk Flush Doors, Inc.** (US Route 11, Northumberland, PA 17857) on June 6, 2003, to operate two wood door roll coaters on a temporary basis, until October 4, 2003, in Point Township, **Northumberland County**. The Plan Approval has been extended.

**53-00004B: Dominion Transmission Corp.** (625 Liberty Avenue, Pittsburgh, PA 15222) on June 10, 2003, to perform NOx, CO and VOCs stack testing on a 2,000 horsepower natural gas-fired reciprocating internal combustion compressor engine (engine no. 4) to July 3, 2003, at their Harrison Compressor Station in Harrison Township, **Potter County**. The Plan Approval has been extended.

**19-320-005: Press Enterprise, Inc.** (3185 Lackawanna Avenue, Bloomsburg, PA 17815) on June 10, 2003, to increase the allowable fountain solution additive usage

rate for an eight color heatset web offset lithographic printing press from 2,000 gallons in any 12 consecutive month period to 3,460 gallons, to increase the allowable fountain solution additive addition rate from 3 ounces per gallon of water to 4 ounces and to increase the allowable VOC and HAP emission rates from 4.37 tons and 1.24 tons, respectively, in any 12 consecutive month period to 5.25 tons and 2.12 tons, respectively, in any 12 consecutive month period in Scott Township, **Columbia County**.

**49-331-001: Merck and Co., Inc.** (P. O. Box 600, Danville, PA 17821) on June 11, 2003, to authorize the operation of a tray tower scrubber to be used for the control of air contaminant emissions from a hazardous waste incinerator at a minimum pressure drop of 10 inches w. g. (1 hour rolling average) instead of 12 inches, to authorize the maximum exit gas temperature to be 230°F (1 hour rolling average) instead of 189°F from a water-cooled quench which will also be used to control air contaminant emissions from a hazardous waste incinerator, to allow all thermocouples or other temperature sensors to be calibrated at a frequency and in a manner consistent with manufacturer specifications, but no less frequent than once every year instead of once every 3 months and requiring that all continuous monitoring systems other than CEMS be installed and operated in conformance with 40 CFR 63.8(c)(3) that requires, at a minimum, to comply with the manufacturer's written specifications or recommendations for installation, operation and calibration of the system in Riverside Borough, **Northumberland County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: William Charlton, New Source Review Chief, (412) 442-4174.*

**32-00365A: Rosebud Mining Co.** (301 Market Street, Kittanning, PA 16201) to install a coal screening plant in Washington Township, **Indiana County**. The Plan Approval was extended.

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#### **Title V Operating Permits issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.**

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*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.*

**17-00003: Dominion Transmission Inc.** (625 Liberty Avenue, Pittsburgh, PA 15222) on May 19, 2003, to issue a renewal Title V Operating Permit for their Luther natural gas transmission facility in Luther Township, **Clearfield County**. This Title V Operating Permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**49-00004: Resilite Sports Products, Inc.** (P. O. Box 764 Sunbury, PA 17801) on April 25, 2003, to issue a renewal Title V Operating Permit for their athletic mat manufacturing facility in Northumberland Borough, **Northumberland County**. This Title V Operating Permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**08-00003: CraftMaster Manufacturing Inc.** (P. O. Box 311 Towanda, PA 18848) on March 27, 2003, under 25 Pa. Code §§ 127.521 and 127.541, the Department issued a revised Title V Operating Permit Revision No. 1 to for their reconstituted wood products production facility in Wysox Township, **Bradford County**. The revised operating permit addressed CraftMaster's concerns with the existing operating permit conditions including moni-



toring, recordkeeping and reporting requirements. The revision also corrected misidentified sources and included air emission sources that were not included in the original issuance of the Title V operating permit. The Title V 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.*

**20-00265: Reliant Energy Mid-Atlantic Power Holdings, LLC—Wayne Station** (Route 178, Cochranon, PA 16314) on June 13, 2003, a permit to operate their facility in Wayne Township, **Crawford County**. The facility, an air emission source, is a 1,210 mmBtu/hr combustion turbine and, because it is a major source of NOx and SOx emissions, is a Title V facility and is therefore subject to the Title V Operating Permit requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

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**Operating Permits for non-Title V facilities issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.**

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*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: Muhammad Zaman, Facilities Permitting Chief, (570) 327-0512.*

**18-00016: Susquehanna Valley Animal Hospital** (P. O. Box 62, McElhattan, PA 17748) on June 11, 2003, to issue a State-only Operating Permit for their animal incinerator in Pine Creek Township, **Clinton County**. This State-only Operating Permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

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**Operating Permit revisions issued including administrative amendments, minor modifications or transfers of ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.**

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*Southeast Region: Air Quality Program, Lee Park, Suite 6010, 555 North Lane, Conshohocken, PA 19428; Contact: Edward Brown, Facilities Permitting Chief, (610) 832-6242.*

**23-302-135GP: Tincum Industrial Partners, LP** (10 Industrial Parkway, Tincum, PA 19113) on June 12, 2003, for two boilers in Tincum Township, **Delaware County**.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Michael Saffo, Facilities Permitting Chief, (570) 826-2531.*

**48-00006: Reliant Energy Mid-Atlantic Power Holdings, LLC** (P. O. Box 1050, Johnstown, PA 15907-1050) to modify the Title V Operating Permit issued to their Portland Generating Station, an electric generating plant in Upper Mt. Bethel Township, **Northampton County**.

*Southcentral Region: Air Quality Program, 909 Elmerton Avenue, Harrisburg, PA 17110; Contact: Yasmin Neidlinger, Facilities Permitting Chief, (717) 705-4702*

**22-05033: Hempt Brothers, Inc.** (205 Creek Road, Camp Hill, PA 17011) on June 9, 2003, to operate their asphalt plant in Steelton Borough, **Dauphin County**. This is Revision No. 1 of the Operating Permit.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**63-00015: Flexsys America, LP** (Flexsys America LP, 829 Route 481, Monongahela, PA 15063) for their Carroll Township Plant in Monongahela, **Washington County**. The Title V Permit is being revised according to settlement negotiations resulting from Flexsys' appeal.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481; Contact: Eric Gustafson, Facilities Permitting Chief, (814) 332-6940.*

**25-00025: General Electric Transportation System—Erie Plant** (2901 East Lake Road, Erie, PA 16531) on April 29, 2003, to operate its Erie Plant in Lawrence Park Township, **Erie County**. The Title V permit was issued on November 2, 2000, and revised on January 15, 2002, and September 23, 2002. The minor modification was for the modification of the Sulfur Dioxide emission limits as specified in 25 Pa. Code § 123.22(b)(4)(iii) for the facility's powerhouse and the major modification was for the modification of the NOx emission limits to reflect the limitations agreed upon as part of a signed Consent Order and Agreement (September 18, 2002).

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**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

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**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); and 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).

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*Coal Permit Actions*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.*

**40930201R2. Lonsetta Trucking & Excavating Company** (P. O. Box 644, 340 Rocky Road, Hazleton, PA 18201), renewal of a coal refuse reprocessing operation in Hazle Township, **Luzerne County** affecting 27.6 acres, receiving stream: none. Application received February 26, 2003. Renewal issued June 10, 2003.

**54930101R2. J & L Coal Company** (1026 Pine Street, Pottsville, PA 17901), renewal of an existing anthracite surface mine operation in Branch Township, **Schuylkill County** affecting 102.8 acres, receiving stream: Schaefer Creek. Application received April 14, 2003. Renewal issued June 12, 2003.

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.*

**10970105 and NPDES Permit No. PA0227625. State Industries, Inc.** (P. O. Box 1022, Kittanning, PA 16201). Renewal of an existing bituminous strip, auger and coal

ash placement operation in Concord and Fairview Townships, **Butler County** affecting 234.7 acres. Receiving streams: three unnamed tributaries to Bear Creek and Bear Creek. Application received April 3, 2003. Permit issued June 2, 2003.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**11940201 and NPDES Permit No. PA0212831. Senate Coal Mines, Inc.**, One Energy Place, Suite 5100, Latrobe, PA 15650, permit revision to change the land use from forestland to unmanaged natural habitat in Adams Township, **Cambria County**, affecting 76.9 acres. Receiving streams: unnamed tributary to South Fork of the Little Conemaugh River (CWF). The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Little Conemaugh surface water intake. Application received March 6, 2003. Permit issued June 2, 2003.

**32000104 and NPDES Permit No. PA0235318. Alverda Enterprises, Inc.**, P. O. Box 87, Alverda, PA 15710, permit revision to add 12.1 acres to the SMP. Total SMP acres goes from 43.2 to 55.3 in Pine Township, **Indiana County**. Receiving streams: Yellow Creek (unnamed tributary) (CWF). There are no potable water supplies within 10 miles downstream. Application received January 15, 2003. Permit issued June 10, 2003.

*Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.*

**63930101 and NPDES Permit No. PA0200263. Twilight Industries, Division of U. S. Natural Resources, Inc.** (212 State Street, Belle Vernon, PA 15012). Permit renewal issued for continued reclamation only of a bituminous surface mining site in Somerset Township, **Washington County**, affecting 126.0 acres. Receiving streams: unnamed tributaries to the North Branch of Pigeon Creek. Application received February 28, 2003. Reclamation only renewal issued June 12, 2003.

*Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.*

**17000109 and NPDES Permit No. PA0242985. Kenneth K. Rishel & Sons, Inc.**, 1229 Turnpike Avenue, Clearfield, PA 16830. Revision to an existing bituminous surface mine permit to change the permit acreage from 20.0 to 25.0 acres and to add auger mining. The permit is in Lawrence Township, **Clearfield County**. Receiving streams: Orr's Run and unnamed stream to Orr's Run (CWF). Application received September 24, 2002. Permit issued May 27, 2003.

#### *Noncoal Permit Actions*

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.*

**58020851. Harold N. Lewis** (R. R. 6, Box 6178, Montrose, PA 18801), commencement, operation and restoration of a quarry operation in Dimock Township, **Susquehanna County** affecting 3.0 acres. Receiving stream: Burdick Creek. Application received November 12, 2002. Permit issued June 10, 2003.

**64030803. Tompkins Bluestone Company, Inc.** (Tar Hollow Road, P. O. Box 776, Hancock, NY 13783), commencement, operation and restoration of a quarry operation in Buckingham Township, **Wayne County**, affecting 4.0 acres. Receiving stream: tributary to Factory Creek. Application received April 4, 2003. Permit issued June 11, 2003.

**58030808. Eric R. Blachek** (R. R. 2, Box 2359, Hallstead, PA 18822), commencement, operation and restoration of a quarry operation in Franklin Township, **Susquehanna County** affecting 5.0 acres. Receiving stream: tributary to DuBois Creek. Application received April 2, 2003. Permit issued June 11, 2003.

**58020852. Harold N. Lewis** (R. R. 6, Box 6178, Montrose, PA 18801), commencement, operation and restoration of a quarry operation in Dimock Township, **Susquehanna County** affecting 3.0 acres. Receiving stream: Burdick Creek. Application received November 12, 2002. Permit issued June 12, 2003.

**58970807T. Joseph A. Decker, Sr.** (R. R. 1 Box 254, Kingsley, PA 18826), transfer and acreage correction of an existing Small Bluestone Quarry in Gibson Township, **Susquehanna County**, affecting 3.0 acres. Receiving stream: Tunkhannock Creek. Application received January 27, 2003. Permit issued June 6, 2003.

*Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232-0669, (814) 797-1191.*

**42030801. John J. Gentilman** (214 Chestnut St., Kane, PA 16735). Commencement, operation and restoration of a small noncoal sandstone and shale operation in Wetmore Township, **McKean County** affecting 5.0 acres. Receiving streams: unnamed tributary to Hubert Run. Application received April 25, 2003. Permit issued June 10, 2003.

**61930301. Cooperstown Sand & Gravel** (P. O. Box 4, Cooperstown, PA 16317). Renewal of NPDES Permit No. PA0211729, Jackson Township, **Venango County**. Receiving streams: Wolf Run. Application received April 15, 2003. Permit issued June 9, 2003.

**33020303 and NPDES Permit No. PA0242144. Glen Gery Corporation** (P. O. Box 7001, Wyomissing, PA 19610). Commencement, operation and restoration of a shale operation in Oliver Township, **Jefferson County** affecting 129.6 acres. Receiving streams: unnamed tributaries of Little Sandy Creek. Application received July 19, 2002. Permit issued June 5, 2003.

*Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.*

**53020803. Randy Cornelius**, Box 127, Roulette, PA 16746. Commencement, operation and restoration of a Small Industrial Minerals (Bluestone) permit in Roulette Township, **Potter County** affecting 3 acres. Receiving streams: unnamed tributary to unnamed tributary to Trout Brook. Application received August 16, 2003. Permit issued May 30, 2003.

**53020804. Samuel A. Treat**, 253 Brookland Road, Coudersport, PA 16915. Commencement, operation and restoration of a Small Industrial Minerals (Flagstone) permit in Sweden Township, **Potter County** affecting 2 acres. Receiving streams: unnamed tributary to Lyman Creek, tributary to Lyman Creek. Application received August 27, 2002. Permit issued June 2, 2003.

#### **ACTIONS ON BLASTING ACTIVITY APPLICATIONS**

**Actions on applications under the Explosives Acts of 1937 and 1957 (73 P. S. §§ 151—161); and 25 Pa. Code § 211.124. 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.**

*Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901-2454, (570) 621-3118.*

**09034013. JOAO & Bradley Construction** (P. O. Box 20345, Lehigh Valley, PA 18002), construction blasting in Perkasio Borough, **Bucks County** with an expiration date of February 22, 2004. Permit issued June 9, 2003.

**45034015. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting in Pocono Township, **Monroe County** with an expiration date of May 11, 2004. Permit issued June 9, 2003.

**64034005. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting in Texas Township, **Wayne County** with an expiration date of May 11, 2004. Permit issued June 9, 2003.

**52034010. Holbert Explosives** (237 Masthope Plank Road, Lackawaxen, PA 18435), construction blasting in Dingmans Township, **Pike County** with an expiration date of July 31, 2003. Permit issued June 9, 2003.

**52034011. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting in Lehman Township, **Pike County** with an expiration date of May 14, 2004. Permit issued June 9, 2003.

**45034016. Hayduk Enterprises** (P. O. Box 554, Dalton, PA 18414), construction blasting in Middle Smithfield Township, **Monroe County** with an expiration date of May 31, 2005. Permit issued June 9, 2003.

**46034017. Beazer Homes** (Princeton Crossroads and Ewing, 250 Phillips Boulevard, Suite 290, Trenton, NJ 08681), construction blasting in New Hanover Township, **Montgomery County** with an expiration date of July 15, 2003. Permit issued June 9, 2003.

**44034001. Geological Technologies, Inc.** (715 Baltimore Street, Martinsburg, WV 25401), construction blasting in Lewistown and Granville Township, **Mifflin County** with an expiration date of November 30, 2003. Permit issued June 9, 2003.

**40034015. No. 1 Contracting** (49 South Main Street, Ashley, PA 18706), construction blasting in Nuangola Borough, **Luzerne County** with an expiration date of June 1, 2004. Permit issued June 12, 2003.

**06034026. Keystone Blasting Service** (381 Reifsnnyder Road, Lititz, PA 17543), construction blasting in Wolmelsdorf Borough, **Berks County** with an expiration date of June 19, 2005. Permit issued June 12, 2003.

**15034009. Brubacher Excavating, Inc.** (P. O. Box 528, 825 Reading Road, Bowmansville, PA 17507), construction blasting in East Bradford Township, **Chester County** with an expiration date of June 20, 2004. Permit issued June 12, 2003.

**54034005. Keystone Drilling & Blasting Specialist, Inc.** (27 Independence Road, Mountaintop, PA 18210) and **Austin Powder Company** (P. O. Box 289, Northampton, PA 18067), construction blasting in Foster, Cass and Butler Townships, **Schuylkill County** with an expiration date of November 15, 2003. Permit issued June 12, 2003.

**01034006. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting in Mount Pleasant Township, **Adams County** with an expiration date of June 19, 2004. Permit issued June 12, 2003.

**15034010. Lonny Horst, Horst Drilling & Blasting, Inc.** (141 Ranck's Church Road, New Holland, PA 17557), construction blasting in Caln Township, **Chester County** with an expiration date of June 19, 2006. Permit issued June 12, 2003.

**15034011. Lonny Horst, Horst Drilling & Blasting, Inc.** (141 Ranck's Church Road, New Holland, PA 17557), construction blasting in Schuylkill Township, **Chester County** with an expiration date of June 20, 2006. Permit issued June 12, 2003.

**15034012. Lonny Horst, Horst Drilling & Blasting, Inc.** (141 Ranck's Church Road, New Holland, PA 17557), construction blasting in Upper Uwchlan Township, **Chester County** with an expiration date of June 20, 2005. Permit issued June 12, 2003.

*Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.*

**02034003. Trumbull Corp.** (1020 Lebanon Road, West Mifflin, PA 15122). Blasting activity permit for construction in Frazier Township, **Allegheny County**, with an expected duration of 510 days. Permit issued June 11, 2003.

*Hawk Run District Mining Office: Empire Road, P. O. Box 209, Hawk Run, PA 16840-0209, (814) 342-8200.*

**14034007. Ameron Construction, Inc.**, 2501 N. Atherton Street, State College, PA 16803, for construction blasting in Ferguson Township, **Centre County**, with an expected duration of 7 months. Permit issued June 3, 2003.

**14034008. Glenn O. Hawbaker, Inc.**, P. O. Box 135, State College, PA 16840-0135, for construction blasting in College Township, **Centre County**, with an expected duration of 7 months. Permit issued June 4, 2003.

## 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).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.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).**

*Permits, Environmental Assessments and 401 Water Quality Certifications Issued*

#### **WATER OBSTRUCTIONS AND ENCROACHMENTS**

*Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**E22-446: Commerce Bank**, 100 Senate Avenue, Camp Hill, PA 17011 in Swatara Township, **Dauphin County**, ACOE Baltimore District.

To place fill within the floodway of a tributary to Spring Creek (WWF) at a point at the intersection of Derry Street and East Park Drive for the purpose of constructing a bank building (Harrisburg East, PA Quadrangle N: 1.5 inches; W: 8.4 inches) in Swatara Township, Dauphin County.

**E36-732: Save Our Creeks**, P. O. Box 906, Ephrata, PA 17522 in Ephrata Borough, **Lancaster County**, ACOE Baltimore District.

To construct and maintain a stream restoration project within Cocalico Creek (WWF) for the purposes of: streambank 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 and J-hooks, riprap, root wad and log spur placement, beginning at the bridge along Church Road within Ephrata Borough and extending approximately 2,200 lineal feet northward along Church Road (Ephrata, PA Quadrangle N: 12.0 inches; W: 6.3 inches) in Ephrata Borough, Lancaster County.

**E22-451: Glen Williard**, 4426 Rathlin Court, Harrisburg, PA 17112 in Jackson Township, **Dauphin County**, ACOE Baltimore District.

To construct and maintain a bridge having a span of 39 feet and an underclearance of 3.25 feet across the channel of Armstrong Creek (TSF) at a point approximately 4900 feet downstream of Schoolhouse Road (LR 20029) (Halifax, PA Quadrangle N: 20.59 inches; W: 0.45 inch) in Jackson Township, Dauphin County.

*Southwest Region: Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**E02-1354. Angelo Development Company**, 100 Springwood Drive, Verona, PA 15147. Meadow Hill Village Wetland Fill in Plum Borough, **Allegheny County**, Pittsburgh ACOE District (New Kensington, PA Quadrangle N: 0.5 inch; W: 16.6 inches). To place and maintain fill in 0.35 acre of wetlands associated with an

unnamed tributary to Little Plum Creek (WWF) and to construct and maintain an outfall structure on the right bank of an unnamed tributary to Little Plum Creek for the purpose of constructing the Meadow Hill Village Plan of Lots on the east side of Old Leechburg Road, approximately 450 feet east from the intersection of Old Leechburg Road and Stotler Road. The applicant proposes to contribute to the Wetland Replacement Fund and will permanently impact 0.35 acre of PEM wetlands.

**E02-1407. Department of Transportation, Engineering District 11-0**, 45 Thoms Run Road, Bridgeville, PA 15107-2853. Little Pine Creek Arch Culvert in McCandless Township, **Allegheny County**, Pittsburgh ACOE District (Emsworth, PA Quadrangle N: 12.1 inches; W: 3.5 inches). To operate and maintain an existing 8-foot by 9.2-foot arch culvert approximately 280 feet long in Little Pine Creek (TSF) and to construct and maintain a 14-foot by 9-foot conspan arch culvert extension for a distance of 48 feet to the upstream end of the existing arch culvert, to construct and maintain a temporary stream crossing consisting of three 36-inch diameter culverts in Little Pine Creek and to construct and maintain a 24-inch diameter stormwater outfall to Little Pine Creek. The work is part of the proposed widening of McKnight Road. The project is on the west side of McKnight Road approximately 1 mile north of its intersection with Peebles Road. This permit will replace permit E02-1050 issued to McCandless Township.

**E02-1411. Ductmate Industries, Inc.**, 1502 Industrial Drive, East Monongahela, PA 15063-9709. Ductmate Industries Stream Enclosure in Forward Township, **Allegheny County**, Pittsburgh ACOE District (Monongahela, PA Quadrangle N: 13.0 inches; W: 2.8 inches). To construct and maintain twin 72-inch diameter culverts each having a length of approximately 138.0 feet in the channel of an unnamed tributary to the Monongahela River for the purpose of providing access to the proposed Ductmate Industries, Inc. manufacturing building. The project is approximately 700 feet south from the intersection of Hollow Road and SR 136 and will permanently impact 165.0 linear feet of stream channel.

**E02-1412. Turnpike Commission**, P. O. Box 67676, Harrisburg, PA 17106. Findlay Connector Station 54A of the Southern Beltway in Findlay Township, **Allegheny County**, Pittsburgh ACOE District. To construct and maintain the following structures and activities as part of the construction of 3.0 miles of new, four-lane, divided, limited access highway known as Station 54A of the Southern Beltway (Findlay Connector; reconstruction and upgrading of 2.5 miles of the Southern Expressway (SR 0060) and reconstruction of 0.5 mile of Clinton Road (SR 3089).

SF No. 761452. A multispan structure consisting of two parallel mainline bridges, each having right spans at 171.5 feet, 207.0 feet, 197.0 feet, 197.0 feet, 197.0 feet, 197.0 feet, 197.0 feet and 150.5 feet and minimum underclearances of 103.52 feet and 102.52 feet and three auxiliary ramp bridges, each having four spans; Ramp A at 130.0 feet, 174.0 feet, 150.12 feet and 110.35 feet; Ramp D at 152.5 feet, 189.0 feet, 189.0 feet and 152.5 feet; and Ramp K at 121.0 feet, 180.25 feet, 188.0 feet and 132.5 feet. Minimum underclearances of 86.51 feet, 99.98 feet and 86.90 feet, respectively, and all constructed over an unnamed tributary to Montour Run (TSF). Mainline Station 115+69+ (Clinton, PA Quadrangle N: 20.2 inches; W: 3.0 inches).

SF No. 761453. A 250-foot long, 72-inch diameter reinforced concrete pipe in an unnamed tributary to

Montour Run (TSF). The pipe will be depressed 0.5 feet and will discharge to a 145-foot long, rock-lined stilling basin and channel. Approximately 40 linear feet of stream channel will be lost due to straightening. Mainline Station 140+60 (Clinton, PA Quadrangle N: 19.3 inches; W: 3.8 inches).

SF No. 761454. A 60-foot long, 33-inch diameter culvert extension on the outlet end of an existing 1,050-foot long, 33-inch diameter culvert in an unnamed tributary to Montour Run. Ramp A Station 239+19 (Clinton, PA Quadrangle N: 19.7 inches; W: 2.0 inches). This pipe qualifies for Department waiver 105.12(a)(2).

SF No. 761455. A 325-foot long, 30-inch diameter culvert extension and a 165-foot long, 40-inch by 65-inch arch culvert extension on the outlet end of an existing 870-foot long, 30-inch diameter culvert in an unnamed tributary to Montour Run. Ramp KL Station 831+00 Rt. (Clinton, PA Quadrangle N: 20.7 inches; W: 3.0 inches). This pipe qualifies for Department waiver 105.12(a)(2).

SF No. 761457. A 225-foot long, 36-inch diameter culvert extension on the outlet end and a 75-foot long, 36-inch diameter extension on the inlet end of an existing 350-foot long, 36-inch diameter culvert in an unnamed tributary to Raredon Run (WWF). Ramp J Station 975+50 Rt. and Ramp I Station 661+50 Rt., respectively (Clinton, PA Quadrangle N: 22.4 inches; W: 4.5 inches). This pipe qualifies for Department waiver 105.102(a)(2).

SF No. 761458. A 35-foot long, 18-inch diameter culvert extension on the inlet end of an existing 360-foot long, 18-inch diameter culvert in an unnamed tributary to Montour Run. SR 0060 South Station 815+60 Rt. (Clinton, PA Quadrangle N: 19.5 inches; W: 1.8 inches). This pipe qualifies for Department waiver 105.102(a)(2).

SF No. 761459. Various outfalls.

Two temporary stream crossings, one consisting of a 40-foot long, 36-inch diameter corrugated metal pipe and the other consisting of a 50-foot long, 36-inch diameter corrugated metal pipe in an unnamed tributary to Montour Run (TSF) Mainline Station 115+69+ (Clinton, PA Quadrangle N: 20.2 inches; W: 3.0 inches).

Two temporary 450-foot long by 100-foot wide wetland crossings constructed for crane access. Mainline Station 115+0 and 116+0 (Clinton, PA Quadrangle N: 20.2 inches; W: 3.0 inches).

One temporary stream crossing consisting of two 75-foot long, 30-inch diameter corrugated metal pipes in an unnamed tributary to Montour Run Mainline Station 141+82 (Clinton, PA Quadrangle N: 19.2 inches; W: 3.8 inches).

SF No. 761461. Also, permanently place and maintain fill in 2.028 acres of wetland (1.234 acres PEM, 0.075 acre PSS and 0.72 acre PFO) and to temporarily place and maintain fill in 1.049 acres of wetland (0.523 acre PEM, 0.320 acre PSS and 0.206 acre PFO). To compensate for the wetland impacts, the applicant is proposing creation of 2.785 acres of replacement wetlands in the Raredone Run Watershed.

**E32-446. Teawood, Inc.**, 500 Ben Franklin Road, Indiana, PA 15701. Teawood Inc. culvert in Center Township, **Indiana County**, Pittsburgh ACOE District (Indiana, PA Quadrangle N: 15.5 inches; W: 14.3 inches). To construct and maintain a 20-foot long low flow crossing having two 48-inch diameter pipe culverts and 10 linear feet of riprap to extend beyond both ends of the culverts

in Cherry Run (CWF) on a proposed residential driveway, along SR 3056, approximately 0.4 mile west of SR 286. The project will impact 0.03 acre of wetland.

**E65-816. Unity Township Supervisors**, 1104 Beatty Road, Latrobe, PA 15650. Beatty-County Road Culvert Replacement in Unity Township, **Westmoreland County**, Pittsburgh ACOE District (Latrobe, PA Quadrangle N: 7.2 inches; W: 8.3 inches). To remove the existing structure and to construct and maintain a box culvert having a single waterway opening of 12 feet wide and 11 feet high (1 foot depressed invert with baffles) and 55 feet long with concrete wing walls and to construct and maintain 60 linear feet of riprap apron in Fourmile Run (TSF). The project is on an access road to the Township Office along Beatty-County Road.

*Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

**E24-230, John T. Rogers**, 214 West Fourth Street, Emporium, PA 15834. Whitman Hollow Pond in City of Saint Marys, **Elk County**, ACOE Pittsburgh District (Wildwood Fire Tower, PA Quadrangle N: 0.5 inch; W: 13.1 inches).

To construct and maintain water intake sump structure with a 4-inch diameter intake pipe excavated into the channel of Whitman Hollow, a tributary to North Fork West Creek (HQ-CWF) approximately 500 feet upstream of the mouth and a 12-inch diameter outfall pipe with rock outlet protection along the left bank approximately 325 feet upstream of the mouth to draw water into and discharge from an excavated pond measuring approximately 130 feet long by 50 feet wide adjacent to the left (south) assumed 50-foot floodway of the stream.

**E24-277, Benezette Township Supervisors**, P. O. Box 10, Benezette, PA 15821. T-423 Bridge Replacement in Benezette Township, **Elk County**, ACOE Baltimore District (Weedville, PA Quadrangle N: 11.6 inches; W: 1.1 inches).

The applicant proposes to remove the existing structure and to: (1) construct and maintain a prestressed concrete I-beam bridge having three clear spans of 30.1 meters each and an underclearance of approximately 6.55 meters on a 70 degree skew across Bennett Branch Sinnemahoning Creek (WWF, perennial) on T-423 approximately 400 feet southeast of the intersection of SR 0555 and T-423; (2) fill a total of 0.009 acre of de minimis PEM wetland and to temporarily affect 0.652 acre of PEM wetlands; and (3) construct a temporary roadway, construction causeway and cofferdams. The project proposes to directly affect a total of 0.009 acre of de minimis PEM wetland and to temporarily affect 0.652 acre of PEM wetlands.

**E62-388, Conewango Township Supervisors**, 4 Firemans Street, Warren, PA 16365. State Street (T-364) Bridge Replacement in Conewango Township, **Warren County**, ACOE Pittsburgh District.

To remove the existing bridge and to construct and maintain a prestressed concrete box beam bridge having a clear span of 50 feet and an underclearance of 8.6 feet on a 90 degree skew across Jackson Run on T-634 (State Street) approximately 600 feet northeast of the intersection of SR 1002 and U. S. Route 62 (Warren, PA Quadrangle N: 20.8 inches; W: 3.9 inches).

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**SPECIAL NOTICES**


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**Recycling Grant Awards under the Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, Act 101**

The Department of Environmental Protection announces the following grants to municipalities for recycling programs under the Pennsylvania Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, Act 101.

Grant funds are used to develop and implement recycling programs. Municipalities and counties are eligible

for up to 90% funding of approved recycling program costs. Municipalities considered financially distressed under the Financial Distressed Communities Act are eligible to receive funding for an additional 10% of approved costs. Grant awards are predicated on the receipt of recycling fees required by sections 701 and 702 of Act 101 and the availability of moneys in the Recycling Fund.

Inquiries regarding the grant offerings should be directed to Todd Pejack, Recycling Grants Coordinator, Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Waste Minimization and Planning, Rachel Carson State Office Building, P. O. Box 8472, Harrisburg, PA 17105-8472.

**Act 101, Section 902 Recycling Development and Implementation Grants**

*Act 101, Section 902 grant awards (Round 47) based on applications submitted by the January 24, 2003 deadline.*

	<i>Municipal Applicant</i>	<i>Project Type</i>	<i>Project Cost</i>	<i>Grant Award</i>
<i>Southeast Region</i>				
1	Avondale Borough Chester County	Yard Waste Composting	\$70,860	\$63,774
<i>Northeast Region</i>				
2	Dunmore Borough Lackawanna County	Yard Waste Collection	\$100,245	\$90,220
3	Lackawanna County	Yard Waste Composting	\$111,112	\$100,000
4	City of Scranton Lackawanna County	Yard Waste Collection	\$87,012	\$87,012
5	City of Allentown Lehigh County	Yard Waste Collection	\$24,667	\$22,200
6	Lehigh County	Yard Waste Composting	\$111,112	\$100,000
7	Dallas Township Luzerne County	Yard Waste Collection	\$110,964	\$99,867
8	Exeter Borough Luzerne County	Yard Waste Collection and Composting	\$111,112	\$100,000
9	Sugar Notch Borough Luzerne County	Yard Waste Composting	\$111,112	\$100,000
10	City of Wilkes-Barre Luzerne County	Yard Waste Collection	\$111,112	\$100,000
11	Wright Township Luzerne County	Yard Waste Collection	\$100,600	\$90,540
12	Chestnuthill Township Monroe County	Yard Waste Composting	\$111,112	\$100,000
13	East Stroudsburg Borough Monroe County	Yard Waste Collection	\$29,400	\$26,460
14	Stroud Township Monroe County	Yard Waste Collection and Composting	\$111,112	\$100,000
15	Hanover Township Northampton County	Yard Waste Collection	\$32,560	\$29,304
16	Lower Nazareth Township Northampton County	Yard Waste Collection	\$54,328	\$48,895
17	Tunkhannock Township Wyoming County	Yard Waste Composting	\$80,909	\$72,818
<i>Southcentral Region</i>				
18	Western Berks COG Berks County	Yardwaste Processing	\$18,000	\$16,200
19	Blair County	Yardwaste Processing	\$111,112	\$100,000
20	South Middleton Township Cumberland County	Composting Site Improvements	\$6,990	\$6,291

## NOTICES

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	<i>Municipal Applicant</i>	<i>Project Type</i>	<i>Project Cost</i>	<i>Grant Award</i>
21	Derry Township Dauphin County	Yard Waste Composting	\$14,440	\$12,996
22	Lancaster County	Yard Waste Composting	\$111,112	\$100,000
23	Lebanon County	Yard Waste Composting and Composting Education	\$111,112	\$100,000
24	North Cornwall Township Lebanon County	Yard Waste Collection and Site Improvements	\$50,494	\$45,444
25	South Lebanon Township Lebanon County	Yard Waste Collection	\$62,644	\$56,379
26	York County	Compost Site Improvements	\$111,112	\$100,000
<i>Northcentral Region</i>				
27	State College Borough Centre County	Yard Waste Collection and Site Improvements	\$111,112	\$100,000
28	Lawrence Township Clearfield County	Yard Waste Collection	\$111,112	\$100,000
29	Briar Creek Township Columbia County	Yard Waste Collection	\$26,635	\$23,971
30	City of Williamsport Lycoming County	Yard Waste Collection	\$110,964	\$99,867
<i>Southwest Region</i>				
31	Mt. Lebanon Township Allegheny County	Yard Waste Collection and Composting	\$108,024	\$97,221
32	Kittanning Borough Armstrong County	Yard Waste Collection and Composting	\$67,929	\$61,136
33	City of Beaver Falls Beaver County	Yard Waste Collection	\$26,250	\$23,625
34	Chippewa Township Beaver County	Yard Waste Collection and Composting	\$29,206	\$26,285
35	Conway Borough Beaver County	Yard Waste Collection	\$35,104	\$31,593
36	Hopewell Township Beaver County	Yard Waste Collection and Composting	\$111,112	\$100,000
37	Monaca Borough Beaver County	Yard Waste Collection	\$28,913	\$26,021
38	Vanport Township Beaver County	Yard Waste Collection	\$43,038	\$38,734
39	Washington Township Fayette County	Yard Waste Composting	\$111,112	\$100,000
40	North Franklin Township Washington County	Yard Waste Collection	\$46,143	\$41,528
<i>Northwest Region</i>				
41	Butler County	Yard Waste Composting	\$40,693	\$36,623
42	Harmony Borough Butler County	Yard Waste Collection	\$35,629	\$32,066
43	Elk County	Food Waste Composting	\$46,287	\$41,658
44	Punxsutawney Borough Jefferson County	Yard Waste Collection and Composting	\$56,969	\$51,272
45	City of New Castle Lawrence County	Yard Waste Composting	\$111,112	\$100,000
			Total	\$3,323,689
				\$3,000,000

[Pa.B. Doc. No. 03-1261. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Availability of Technical Guidance

Technical guidance documents are on the Department of Environmental Protection's (Department) website ([www.dep.state.pa.us](http://www.dep.state.pa.us)) at the Public Participation Center page. The "Current Inventory" heading is the Governor's list of nonregulatory guidance documents. The "Final Documents" heading is the link to a menu of the various Department bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2003.

#### *Ordering Paper Copies of Department Technical Guidance*

The Department encourages the use of the Internet to view guidance documents. When this option is not available, persons can order a bound paper copy of the latest inventory or an unbound paper copy of any of the final documents listed on the inventory by calling the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

#### *Changes to Technical Guidance Documents*

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with the document.

#### *Notice of Intent to Rescind Technical Guidance*

DEP ID: 012-0900-002. Title: Electronic Copies of Technical Guidance. Description: This document will be rescinded, as it has become obsolete. The original formatting, preparation and process for posting technical guidance have been upgraded since 1997, with an integrated practice of making documents available for the public on the Department's website. Effective Date: June 28, 2003. Contact: Joe Sieber, (717) 783-1497, [jsieber@state.pa.us](mailto:jsieber@state.pa.us).

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 03-1262. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Pennsylvania Energy Harvest Grant Program Applications

The Department of Environmental Protection (Department) announces the availability of \$5 million of grant funding through the new Pennsylvania Energy Harvest Grant Program (program).

Grants will fund projects that promote awareness and build markets for cleaner or renewable energy technologies. Proposals should manage this Commonwealth's energy resources in a way that also improves the environment, supports economic development and enhances quality of life.

Eligible proposals include: renewable energy development; biomass energy projects; waste coal reclamation for energy; demonstration of innovative energy efficiency technologies; and distributed generation infrastructure

improvements. Special consideration will be given to proposals that assist farmers and reclaim waste coal.

Applicants must complete and submit an application available by contacting the Department Grants Center, (717) 705-5400 or may be obtained electronically through the Department's website: <http://www.dep.state.pa.us> (directLINK "2003 Energy Harvest Grant"). The application package contains the materials and instructions necessary for applying for a grant.

Applications must be postmarked or received, if hand delivered, by 4:30 p.m. on September 19, 2003, at the Department Grants Center, 15th Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8776, Harrisburg, PA 17105-8776, (717) 705-5400 or (877) PAGREEN. Faxes will not be accepted. Use staples only, no binding or cover pages.

Persons who have questions about the program should contact the Department Grants Center, (717) 705-5400.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 03-1263. Filed for public inspection June 27, 2003, 9:00 a.m.]

### State Board for Certification of Water and Wastewater Systems Operators Meetings

The State Board for Certification of Water and Wastewater System Operators (Board) has made the following additions to its 2003 meeting schedule to discuss draft regulations.

The Board will meet on July 9, 2003, in the 16th Floor Delaware Room and on August 8, 2003, in the 14th Floor Conference Room. The meetings will begin at 9 a.m. in the Rachel Carson State Office Building, 400 Market Street, Harrisburg.

Persons who have questions concerning these meetings should contact Lynn Rice, (717) 787-5236, [mlrice@state.pa.us](mailto:mlrice@state.pa.us).

Persons with a disability who require accommodation to attend a meeting should contact Lynn Rice at the previous telephone number or e-mail address or through Pennsylvania AT&T Relay Services at (800) 654-5984 (TDD) to discuss how their needs may be accommodated.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 03-1264. Filed for public inspection June 27, 2003, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Approval of a Drug which may be Used by Certain Optometrists

Under the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.1—244.12), and specifically as that act was amended by the act of December 16, 2002 (P. L. 1950, No. 225) (Act 225), the Secretary of Health (Secretary) has the authority to approve drugs for use in the practice of optometry as the "practice of optometry" is defined in Act 225. The State Board of Optometry, through the Secretary of State, provided the Secretary a list of drugs



on April 17, 2003, and requested that the Secretary approve the use of those drugs. Act 225 requires that the Secretary, within 90 days of the receipt of the list of drugs, and in consultation with the Physician General, approve or disapprove for good cause each drug. The Secretary has found good cause to approve the use of the following drug in the practice of optometry:

*Topical Antibacterial*

Povidone-iodine

The approval of the use of this drug is effective upon publication in the *Pennsylvania Bulletin*.

Questions should be directed to John Hair, Director, Bureau of Community Program Licensure and Certification, 132 Kline Plaza, Suite A, Harrisburg, PA, 17104, (717) 783-8665.

Persons with a disability who require an alternative format of this document (for example, large print, audiotape or Braille) should contact John Hair at the number or address previously listed or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Acting Secretary*

[Pa.B. Doc. No. 03-1265. Filed for public inspection June 27, 2003, 9:00 a.m.]

**Request for Exception; 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):

Mulberry Square  
407 Mulberry Square  
Punxsutawney, PA 15767

This request is on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax: (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on this exception request may do so by sending a letter by mail, e-mail or facsimile to the division and address 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, audiotape or Braille) should contact the Division of Nursing Care Facilities at the address or phone numbers previously listed or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Acting Secretary*

[Pa.B. Doc. No. 03-1266. Filed for public inspection June 27, 2003, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### Availability of the Low-Income Home Energy Assistance Program Proposed State Plan and Public Hearing Schedule

The Department of Public Welfare (Department) is making available for public review and comment the Fiscal Year (FY) 2003-04 Low-Income Home Energy Assistance Program (LIHEAP) proposed State Plan. Comments on this document and testimony received at public hearings scheduled for July will be used to formulate the Department's final State Plan for using Federal funds in the FY 2003-04 LIHEAP.

The Department has sent advance copies of the proposed State Plan to the LIHEAP Advisory Committee. In addition, copies have been sent to fuel associations, legal service agencies and area agencies on aging for distribution to their members or constituents. Persons who want copies can obtain them after publication of this notice by contacting a local county assistance office or by contacting Karen Kirk, (717) 772-7906.

The Department will hold three public hearings throughout this Commonwealth to allow testimony on the proposed State Plan and to fulfill the Federal mandate for public input into the planning process. This mandate appears in Title XXVI (The Low-Income Home Energy Assistance Act of 1981) (Pub. L. No. 97-35, 42 U.S.C.A. §§ 8621-8629) as amended by the Human Services Reauthorization Act of 1984 (Pub. L. No. 98-558), the Human Services Reauthorization Act of 1986 (Pub. L. No. 99-425), the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. No. 101-501), the National Institutes of Health Revitalization Act of 1993 (Pub. L. No. 103-43), the Low-Income Home Energy Assistance Amendments of 1994 (Pub. L. No. 103-252) and the Coats Human Services Reauthorization Act of 1998 (Pub. L. No. 105-285).

*Public Hearing Schedule*

July 15, 2003, 10 a.m.—1 p.m.  
Philadelphia County Assistance Office  
LIHEAP Conference Room, 2nd Floor  
4601 Market Street  
Philadelphia, PA

July 17, 2003, 10 a.m.—12 p.m.  
Allegheny County Courthouse  
Gold Room, 4th Floor  
436 Grant Street  
Pittsburgh, PA

July 18, 2003, 10 a.m.—12 p.m.  
Health and Welfare Building  
Room 812, 8th Floor  
Forster Street  
Harrisburg, PA

Persons who wish to testify on the proposed State Plan at a public hearing should arrange a time by telephoning (717) 772-7906 before July 3, 2003. Persons from outside the Harrisburg area should call (800) 692-7462 or send a written request, including telephone number, to Nancy Poindexter, Federal Programs and Program Management, Room 224, Willow Oak Building No. 42, DPW Complex 2, P. O. Box 2675, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
Secretary

[Pa.B. Doc. No. 03-1267. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Change in Methods and Standards of Setting Payment Rates

The purpose of this announcement is to provide advance notice that the Department of Public Welfare (Department) intends to make changes in its methods and standards for payment of Medical Assistance (MA) nursing facility services beginning in Fiscal Year (FY) 2003-2004.

#### Background

The Commonwealth budget for MA long-term care services for FY 2003-2004 assumes that \$320 million will be derived from State revenue collected from an assessment on nursing homes and the Federal funds drawn down as a match for the State assessment revenue.

To impose the assessment and collect the anticipated State revenues necessary for the Federal match, legislation must be enacted. Without legislation authorizing the assessment, the Department has determined there will be insufficient funds available to make payments to nursing facilities in accordance with the existing payment methodology set forth in 55 Pa. Code Chapter 1187 (relating to nursing facility services) throughout FY 2003-2004. Absent the availability of revenue necessary to address the funding shortfall, the Department intends to publish a final-omitted rulemaking under section 6 of the Regulatory Review Act (71 P. S. § 745.6) and to submit a State Plan amendment to the Federal Centers for Medicare & Medicaid Services changing the case-mix payment methodology. Under section 6(d) of the Regulatory Review Act, the amendments will take effect immediately upon publication in the *Pennsylvania Bulletin* and will remain in effect for 120 days.

#### Description of Changes

The Department proposes to amend 55 Pa. Code Chapter 1187, case-mix payment system regulations, and amend the Commonwealth's Medicaid State Plan as follows.

#### Current MA Participating Nursing Facilities

For the rate year that begins on July 1, 2003, each of the four rate components listed in 55 Pa. Code § 1187.96(e) (relating to price and rate setting computations) shall be multiplied by .8788 (or another factor as may be necessary depending upon the effective date of the regulation) and the sum of the resulting products shall be the nursing facility's per diem rate for payments made for nursing facility services rendered on or after the effective date of the regulation.

For purposes of the quarterly adjustments made under 55 Pa. Code § 1187.95(b) (relating to general principles for rate and price setting), after a nursing facility's adjusted resident care component has been computed in accordance with that provision, it shall be multiplied by .8788 (or another factor as may be necessary depending upon the effective date of the regulation) and the facility's per diem rate for that quarter for payments made for

nursing facility services rendered on or after the effective date of the regulation shall be the sum of that amount plus the adjusted amount for the other resident care, administrative and capital rate components.

#### New MA Nursing Facilities

If, during the rate year that begins on July 1, 2003, a nursing facility is a new nursing facility, each rate component that is computed for that facility under 55 Pa. Code § 1187.97(1) (relating to rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities, and former prospective payment nursing facilities) shall be multiplied by .8788 (or another factor as may be necessary depending upon the effective date of the regulation) and the sum of the resulting products shall be the facility's per diem rate for payments made for nursing facility services rendered on or after the effective date of the regulation.

If, during the rate year that begins on July 1, 2003, a nursing facility is a new nursing facility and that facility's resident care rate component is adjusted under 55 Pa. Code § 1187.97(1), the adjusted resident care component shall be multiplied by .8788 (or another factor as may be necessary depending upon the effective date of the regulation) and the facility's per diem rate for the applicable quarter for payments made for nursing facility services rendered on or after the effective date of the regulation shall be the sum of that amount plus the sum of the other resident care, administrative and capital rate components multiplied by .8788 (or another factor as may be necessary depending upon the effective date of the regulation).

#### Fiscal Impact

As a result of this proposed change, the Department estimates that annual aggregate expenditures for MA nursing facility services for FY 2003-2004 will decrease by \$320.407 million (\$135.500 million in State funds).

#### Public Comment

Interested persons are invited to submit written comments about the changes to the case-mix payment system to the Department within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Comments should be addressed to the Department of Public Welfare, Division of Long Term Care Client Services, Attention: Gail Weidman, P. O. Box 2675, Harrisburg, PA 17105. In the absence of the passage of legislation authorizing the Department to impose an assessment or the receipt of comments proposing a viable alternative to collect the necessary revenue, the Department intends to proceed with the publication of the regulations and the submission of the State Plan amendment to make the changes previously described.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
Secretary

**Fiscal Note:** 14-NOT-367. No fiscal impact; (8) recommends adoption. This proposed change will result in a decrease in aggregate expenditures in Fiscal Year 2003-2004 of \$135.5 million to the Medical Assistance—Long Term Care appropriation.

[Pa.B. Doc. No. 03-1268. Filed for public inspection June 27, 2003, 9:00 a.m.]

## Final Standing Practice Order

Pursuant to the act of December 3, 2002 (P. L. 1147, No. 142) ("Act 142"), § 20.1, 67 Pa.C.S. § 1102(g) (relating to hearings before the Bureau), the Department of Public Welfare ("Department"), Bureau of Hearings and Appeals ("Bureau") hereby issues the Standing Order (Order) set forth in Annex A. The Order establishes rules governing Medical Assistance ("MA") provider appeals. The Order is effective July 1, 2003.

### *Summary of Public Comments and Revisions*

Act 142 added 67 Pa.C.S. Chapter 11 (relating to Medical Assistance hearings and appeals), which establishes a statutory framework for MA provider appeals. Section 1102(g) of 67 Pa.C.S. (relating to hearings before the Bureau) requires that the Bureau, after receiving public comments, issue an order prior to July 1, 2003 establishing rules governing practice before the Bureau in MA provider appeals. In accordance with § 1102(g), the Bureau published a proposed Order at 33 Pa.B. 1168 (March 1, 2003) and asked interested parties to submit written comment within 30 days.

The Bureau received written comments from six commentators representing trade associations and private law firms within the 30-day comment period. The Bureau has carefully reviewed and considered the comments and thanks the commentators for their thoughtful comments and recommendations on the proposed Order. A summary of the major written comments, the Bureau's response to those comments and the revisions made to the proposed Order follows.

### *General—Regulation*

Two commentators suggested that Act 142 requires that the Department publish proposed and final regulations by July 1, 2004 and that the Department solicit public input through the formal rulemaking process including public and legislative review.

### *Response*

Act 142 specifies that the Department, through the Bureau, must promulgate regulations establishing rules of procedure as may be necessary to carry out the provisions of Act 142 by July 1, 2004, and establish an advisory committee "to provide assistance and guidance" in the development and modification of any such regulations. When the Bureau published the proposed Order for comment, it solicited individuals interested in serving on the regulatory advisory committee to submit a letter of interest to the Bureau Director. The Bureau will establish the advisory committee and seek the committee's input regarding the nature and scope of regulations necessary to carry out the provisions of the Act.

### *General—Rules*

One commentator suggested that the Order disadvantages providers rather than sets fair processes and procedures and that many elements of the Order expand the privileges of the Department while restricting the rights of providers. Another commentator suggested that the Order does not provide for fair and equitable treatment of providers. That same commentator also stated that the Order does not assure just, speedy and inexpensive determination and that it does not contain sufficient opportunity for providers to receive notice and be heard. The commentator suggested that the Order gives too much discretion to the Bureau, but also stated that the Order does not sufficiently maintain the Bureau's independence.

### *Response*

Consistent with Act 142, the Order expressly guarantees the independence and impartiality of the Bureau hearing officers in deciding appeals. See Rule 50 (relating to independence; ex parte communications). In considering the comments and drafting this Order, however, the Bureau recognized that the complexity of any adjudicative process must be weighed against the time and expense associated with that process. The Order sets forth rules that are intended to achieve a just and speedy determination of provider disputes while protecting and balancing both the public and private interests involved. For example, the Order specifies the minimum discovery to which a party is entitled as a matter of right, but allows the party to exceed the minimum if the party establishes that more discovery is reasonable and necessary in the particular case involved.

The Bureau finds that the Order provides sufficient notice and opportunity to be heard to providers and gives appropriate discretion to Bureau. The Order provides the Bureau with the same level of discretion to adjudicate provider appeals as is afforded to comparable administrative adjudicative tribunals, such as the Environmental Hearing Board and the Medicare Provider Reimbursement Board, and as is already provided under GRAAP. Placing undue restrictions on or eliminating the Bureau's discretion in adjudicating provider disputes would not only be inappropriate, but would hinder the Bureau's ability to conduct a de novo review as required by Act 142. See also *Millcreek Manor v. DPW*, 796 A.2d 1020 (Pa.Cmwlth Ct. 2002).

### *General—Time Frames*

One commentator suggested that the Bureau should be required to resolve provider payment and reimbursement decisions within a specified time period, such as two to three years.

### *Response*

Act 142 requires the Bureau to "promptly adjudicate" provider appeals and to "establish deadlines for interim and final actions by the Bureau and parties to any proceeding before the Bureau." In accordance with these requirements, the Order sets forth various deadlines for the parties to, among other things, make disclosures, submit position papers and file procedural and dispositive motions in provider appeals. The Order also establishes deadlines for the Bureau to act on motions and to issue determinations in provider appeals. As written, the Order contemplates that adjudications generally will be issued within the time frame suggested by the commentator.

### *General—Scope of Order*

One commentator criticized the proposed Order as being overly broad. This commentator suggested that Act 142 does not reach a provider's right to petition the Secretary of Public Welfare under 1 Pa. Code §§ 35.17—35.20 (relating to pleadings and other preliminary matters) in that such matters are not appeals from adjudications. This same commentator stated that, to the extent the Order seeks to regulate areas beyond the statutory authority of Act 142, the Order violates the Commonwealth Documents Law (45 P.S. § 1201 et seq.) by superseding 1 Pa. Code §§ 35.14—35.24 and that such matters continue to be regulated by 1 Pa. Code, Part II, Chapters 31, 33 and 35, General Rules of Administrative Practice and Procedure (GRAPP) unless and until the Department adopts regulations.

Another commentator criticized the proposed Order as being unduly narrow. This commentator suggested that

the Order makes an artificial distinction between “waiver request,” “petition for relief” and “hearing” and that the Order imposes significant restrictions on waivers and petitions. This commentator suggested that Act 142 applies to any decision of the Department relating to the administration of the MA program, including decisions on requests for changes to or waivers from regulations, policies, procedures or interpretations. The commentator suggested that by providing different procedures for petitions for relief, the Department has inappropriately narrowed the scope of the hearing to which providers are entitled under the Act.

#### *Response*

At the outset, the Bureau notes that there is general agreement that Act 142 grants providers the right to appeal adjudicative determinations of the Department to the Bureau and that the Order should encompass those matters. The commentators’ disagreement with each other and the proposed Order centers on whether and to what extent the Order should also apply to actions of the type currently permitted under §§ 35.17–35.20 of GRAPP. Those rules permit the submission of “petitions” seeking the issuance, amendment, waiver or appeal of regulations, the issuance of declaratory orders and the appeal of actions taken by “subordinate officers” of an agency. As proposed, the Order would have superseded §§ 35.17–35.20 but would have continued to distinguish between these types of actions and those involving adjudicative agency actions. The distinction was reflected throughout the proposed Order, including in the definitions of “request for hearing” and “petition for relief.”

Having evaluated the commentators’ views regarding the proper scope of the Order, the Bureau agrees with commentators that the scope of the Order should be identical to that of Act 142. The Bureau intends that Order cover the procedural matters encompassed by Act 142, but no others. In cases that involve actions outside the scope of Act 142, other rules (e.g., 55 Pa. Code Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) or GRAPP) apply.

Act 142 provides that a Department action or decision is appealable only if the provider is “aggrieved.” 67 Pa.C.S. § 1102(a). In order for a provider to be aggrieved, the action must be adjudicative in character. “Adjudicative agency actions are those that affect one individual or a few individuals, and apply existing laws or regulations to facts that occurred prior to the adjudication.” *Small v. Horn*, (Pa., 1998). Act 142 specifies that hearings under the act only involve “adjudications of the Department relating to the administration of the [MA] Program” and that encompass “action[s] relating to a provider’s enrollment in, participation in, claims for payment or damages under or penalties imposed under the program.”

When the Department undertakes an adjudicative action, Act 142 and this Order apply, and the aggrieved provider must file a timely and proper request for hearing in order to contest the action. Since an adjudicative agency action may be undertaken by a subordinate official, the Bureau agrees with the second commentator that Act 142 and the Order supersede 1 Pa. Code § 35.20, which presently permits a provider to appeal actions taken by a subordinate officer directly to the Secretary. Contrary to § 35.20, under this Order, any such appeal must be filed with the Bureau.

Adjudicative actions do not include agency actions “that are legislative in character,” i.e., actions that “result in

rules of prospective effect and bind all, or at least a broad class of, citizens.” *Id.* Under existing Pennsylvania law, the issuance of regulations is a legislative act, not an “adjudication.” *Laurel Lake Ass’n v. Pennsylvania Fish and Boat Comm’n*, 710 A.2d 129, 132 (Pa.Cmwlth. 1998); *Insurance Co. of North America v. Insurance Dept.*, 15 Pa.Cmwlth. 462, 327 A.2d 411 (1974). Consequently, the Bureau agrees with the first commentator that petitions requesting the issuance, amendment or repeal of regulations would not involve an appealable adjudicative action and, therefore, would not fall within the scope of Act 142. Thus, such petitions would properly be filed under 1 Pa. Code § 35.18 and GRAPP would apply in such matters.

The Bureau recognizes that a provider may request a waiver of a regulation or request declaratory relief without any underlying appealable action having been taken by the Department. Since Act 142 only applies to appealable actions, the Bureau also agrees with the first commentator that such requests would fall outside the scope of Act 142. Instead, such requests must be made by petition under 1 Pa. Code § 35.18 and GRAPP would apply in such matters.

In consideration of the comments received, the Bureau has eliminated or revised the various provisions that would have prescribed rules of procedure relating to properly filed petitions for relief. These changes, which are explained in greater detail in subsequent sections of this preamble, have the following effect: so long as there is no underlying appealable “agency action,” the procedures governing petitions for relief are those set forth in the GRAPP. Where an appealable action is taken, however, Act 142 and the Order will apply. Thus, the Order continues to require that all issues and requests for relief relating to a contested agency action, including requests for waiver of a regulation or a determination of the applicability or meaning of a regulation or policy, must be set forth in a proper and timely request for hearing.

#### *Rule 1. Scope of rule*

One commentator suggested that the Order inappropriately excludes certain types of claims. The commentator believes that the Order must encompass proceedings affecting recipients to the extent a provider is aggrieved by a Departmental action and, therefore, 55 Pa. Code Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) should not be excluded from the scope of the Order.

#### *Response*

Act 142 applies only to medical assistance provider appeals. Recipient appeals under 55 Pa. Code Chapter 275 are not included within the scope of Act 142, and, therefore, are not subject to this Order. When providers are permitted to file certain appeals for recipients under a valid power of attorney or court order, they are acting as the recipient’s representative. To the extent the provider is permitted by law to act as a recipient’s representative, the provider is asserting the recipient’s right to appeal and Chapter 275 properly applies.

#### *Rule 1. Other revisions*

The Department clarified this rule to identify the effective date of the Order and to define the scope of the rules in general and the limitations applicable to appeals filed before, on and after December 3, 2002.

#### *Rule 2. Construction and application of rules*

One commentator suggested that the approach of selective and partial incorporation of the GRAPP by reference

into the Order is confusing and will create disputes. The commentator suggested that partial incorporation by reference is troubling because the Order supersedes 1 Pa. Code § 31.6 (relating to amendments to rules) that provides the Joint Documents Committee may amend the GRAPP, including its application to hearings before Bureau. The commentator suggests that the Order should supersede the GRAPP in its entirety and that relevant provisions of the GRAPP should be restated to create a single set of comprehensive rules.

*Response*

For purposes of this Order, the Bureau has continued to incorporate by reference those GRAAP rules that have not otherwise been superceded by the Order. The Bureau will seek input from the regulatory advisory committee as to whether any regulations promulgated by the Department should set forth, rather than incorporate by reference, the applicable GRAPP rules.

*Rule 3. Definitions—Agency Action*

Several commentators suggested that the definition of the term “agency action” should be revised to be consistent with Act 142. They suggested that Act 142 limits the Bureau’s authority to adjudications and that other actions continue to be regulated by Administrative Agency Law and 1 Pa. Code, Part II (relating to the general rules of administrative practice and procedure).

*Response*

As discussed previously, this Order applies only to provider appeals contesting adjudicative actions of the Department. The Bureau has revised the definition of “agency action” accordingly. The revision is intended make clear that the statutory right granted by Act 142 to bring proceedings before the Bureau does not arise by reason of the lack of or absence of an adjudicative agency action. The remainder of the definition of “agency action” tracks the provisions set forth in Act 142’s definition of “hearing,” which provides further instruction on the concept of what is appealable.

*Rule 3. Definitions—Hearing*

Three commentators requested that the definition of “hearing” be revised to be consistent with Act 142. Specific comments included: a) The Bureau’s authority is limited by Act 142 to adjudications, b) Act 142 does not limit hearings to contested factual issues, but instead includes a proceeding concerning an adjudication relating to the administration of the Medical Assistance program and c) Act 142 provides that hearings be conducted before the Bureau, not the Secretary of Public Welfare.

One commentator suggested that there is an artificial distinction between “waiver request,” “petition for relief” and “hearing” and that significant restrictions are imposed on waivers and petitions. That commentator suggested that, under Act 142, any decision of the Department relating to the administration of the MA program is subject to hearing, including request for changes to or waivers from regulations, policies, procedures or interpretations. The commentator suggested that the Department has inappropriately narrowed the scope of the hearing to which providers are entitled under the Act.

*Response*

Act 142 defines “hearing” to be a “proceeding” commenced by a provider pursuant to 67 Pa.C.S. § 1102(a). Thus, when used in this manner, the term “hearing” is synonymous with such terms as “action,” “appeal” and “matter.” 2 Pa.C.S. § 101. Consistent with the statutory

definition, the Order uses the term “request for a hearing” to refer to the initial pleading that a provider must file in order to commence such an action. 67 Pa.C.S. § 1102(b)(1) and (d).

In some instances, however, Act 142 uses “hearing” in the ordinary sense, to refer to those parts of an action at which evidence is presented and interlocutory disputes are considered and resolved. 67 Pa.C.S. §§ 1102(e)(1) and (2); 1104. Thus, as used by Act 142, “hearing” has a variety of meanings. The Bureau has revised the term “hearing” to include all of the statutory meanings. In addition, in order to improve the clarity of the Order, the Bureau has retained the term “provider appeal” as a synonym for “hearing” as defined by the Act at 67 Pa.C.S. § 1101. As retained, the term no longer encompasses actions commenced by “petitions for relief.”

As noted previously, Act 142 only applies to “adjudications of the Department relating to the administration of the [MA] Program.” Petitions for relief seeking the amendment, repeal or adoption of regulations or seeking the waiver of a regulation in the absence of an agency action do not involve adjudicative acts of the Department and, therefore, do not fall within the meaning of the term “hearing” as it is defined in 67 Pa. C.S. § 1101. If a provider seeks a waiver of a regulation in connection with an adjudicative agency action, Act 142 and this Order do apply.

*Rule 3. Definitions—Petition for relief*

One commentator suggested that the definition of “petition for relief” should reflect that it may not involve an appeal.

*Response*

The Bureau agrees with the comment that the Order applies only to matters arising from “agency actions” and so has revised the Order to eliminate those provisions that would have regulated other types of matters. The Bureau has retained and revised the term “petition for relief” in order to identify those actions that are commenced by providers which fall outside the scope of Act 142.

*Rule 3. Definitions—Presiding officer*

One commentator suggested that this term should indicate whether the individuals appointed by the director are required to be Bureau or program office employees. Alternatively, the commentators suggested that the Order should provide that presiding officers will be appointed by the Director from a panel of Bureau employees whose sole function is to act as presiding officers.

*Response*

The Bureau currently assigns individuals who are either employed by the Bureau or under contract with the Bureau and who receive special training in conducting administrative hearings and issuing adjudications in accordance with applicable statutes and regulations to preside in provider appeals. In keeping with Act 142’s requirement of independence, the Bureau does not assign any employee or official of the Department whose actions are subject to review by the Bureau to act as a presiding officer. Nor does the Bureau assign an individual, whether employed by or under contract with the Bureau, to hear a case that involves a matter in which he or she participated by way of investigation, enforcement or litigation on behalf of a party. The Bureau does not intend to change its current practices regarding the assignment of presiding officers. Upon further review, the Bureau has determined that the GRAPP definition of

presiding officer is sufficient and has eliminated the definition of presiding officer from this rule.

*Rule 3. Definitions—Provider appeal*

One commentator suggested that the term “provider appeal” be stricken since it causes confusion between those matters that are within Act 142 and those that are not.

*Response*

The term “provider appeal” was included in the proposed Order in order to collectively refer to two distinct types of actions. Because, as discussed elsewhere, the final Order has been revised to pertain only to “requests for hearings,” the proposed definition of “provider appeal” has become obsolete. However, since Act 142 gives the term “hearing” multiple meanings, “provider appeal” has been revised and retained as a synonym for one “hearing” as defined at 67 Pa.C.S. § 1101. The Bureau finds that, when used in this manner, “provider appeal” improves the clarity of the Order.

*Rule 3. Definitions—Senior Department official*

One commentator suggested that this term is defined too broadly. The commentator suggested the elimination of persons who work in the Office of the Secretary or who report directly to the Secretary.

*Response*

The Bureau has retained the term as defined in the proposed Order, but has revised the conditions under which a party will be permitted to depose a senior department official. (See response under Rule 36(c)(4)(ii)(relating to methods to discover additional information).)

*Rule 3. Other changes*

The Bureau has included a definition of GRAPP in the rule.

*Rule 5. Jurisdiction of the Bureau*

One commentator requested that the Bureau clarify that its jurisdiction is not exclusive with respect to administrative penalties where there is dual Federal and state jurisdiction. The commentator requested that the Bureau establish procedures to prevent duplication and unnecessary expense in these cases. Another commentator questioned whether appeals under the Order would be used to resolve disputes brought by providers that operate under Medical Assistance Waiver Programs.

*Response*

Federal regulations may require providers to use Federal appeal procedures in order to contest the imposition of sanctions and remedies. See, e.g., 42 C.F.R. 431.153(g) (relating to evidentiary hearing). Rule 5 has been revised to clarify that, in such instances, the Federal rules govern and the Bureau would not have jurisdiction.

This Order will apply to an appeal by a provider aggrieved by an adjudicative action relating to an MA Waiver Program. For example, the Order will apply to a dispute involving the rejection of a waiver provider's invoice under the 180-day rule. The Order will not apply, however, to determinations relating to an individual's eligibility for waiver services or other determinations involving applicants or recipients of waiver services. Appeals from such determinations are governed by 55 Pa. Code Chapter 275.

*Rule 6. Timely filing required*

One commentator questioned whether the Bureau will use the 30-day timeframe found in 55 Pa. Code §§ 1101.84(a), (b) and (c) (relating to provider right of appeal), 6210.123 (relating to time limit for submission of appeals) and 6211.33 (relating to denied waiver), or, the timeframe at 67 Pa.C.S. § 1103(b). The same commentator asked if filing of appeals and amendments will be accepted by facsimile or other types of electronic transmission.

*Response*

Act 142 establishes the timeframes for provider appeals. Those statutory timeframes are contained in Rule 19 (relating to timeliness and perfection of requests for hearings.) Rule 19 supercedes any prior inconsistent Department regulations. Except as authorized by Rule 20 (relating to appeals nunc pro tunc), a provider must file its request for hearing, and any amendment thereto, in writing within the timeframes specified in Rule 19.

Rule 9 (relating to form) has been revised to specify that the Bureau will only accept for filing an original hard copy of a pleading bearing an original signature. The Bureau will not accept pleadings filed by facsimile or electronic submission.

*Rule 7. Extensions of time*

One commentator asked if requests for extensions of time will be accepted by facsimile or other types of electronic transmission.

*Response*

Rule 9 has been revised to permit legal documents, including motions, to be filed by facsimile so long as they do not exceed 20 pages in length, including attachments and exhibits.

*Rule 11. Verification*

One commentator suggested that this rule is overly broad and burdensome. The commentator suggested that all parties already must sign and certify pursuant to Rule 38 (relating to signing of disclosures, discovery, discovery requests, responses and objections). The commentator suggested amending this rule to require that the Bureau identify those documents containing facts of significance that must be verified.

A second commentator requested clarification of the phrase “not appearing of record” and who must verify a response on behalf of the Department or a program office.

*Response*

Courts routinely require litigants to verify facts set forth in the documents that they file. See, e.g. Pa.R.C.P. 1024 (relating to verification); 52 Pa. Code §§ 1.36 (relating to verification). The Bureau has determined that verification should likewise be required in MA provider appeals. Upon consideration of the comments, the Bureau has revised Rule 11 to clarify that a pleading or a legal document containing averments of fact not of record and denials of fact must be verified. The Bureau has also revised the rule to set out an acceptable form of verification. Any fact contained in a pleading or legal document that has not been previously verified or stipulated by the parties must be verified in the form specified in the rule or in a form that substantially complies with the rule.

*Rule 12. Number of copies; copying of Bureau documents.*

One commentator suggested that a party filing a document containing privileged or confidential information should prominently designate the document as such

and allow parties to motion to protect against disclosure or to challenge the characterization as privileged or confidential.

*Response*

Rule 12(c) makes any document, including pleadings, legal documents, attachments and exhibits, that a party files with the Bureau generally available to the public regardless whether a particular document satisfies the definition of "public record" set forth in Section 1 of the Right to Know Law. 65 P. S. § 66.1. However, Rule 12(c) does not abrogate or affect any existing rule of law that either bars disclosure of protected health information or other confidential information or that limits a person's right of access to documents or information. Thus, for example, the limitations on disclosures of information set forth at 55 Pa. Code § 105.4 (relating to procedures) and 45 CFR Parts 160 and 164 (relating to standards for privacy of individually identifiable health information) are unaffected by Rule 12(c). Therefore, the Bureau will apply those limitations in considering any request for access to filed documents.

Because the record in Bureau proceedings may be disclosed to the public, parties should carefully review the documents that they submit for filing to ensure that they do not contain personal health information or other confidential information that identifies individuals. If parties must include materials with confidential information in documents filed with the Bureau, the parties should redact identifying information from the documents or file a motion pursuant to Rule 40 (relating to procedural motions) for permission to file the documents under seal. If a party files a document with a redaction, the Bureau, on its own or upon motion of another party, may require production of the unredacted document for in camera inspection in order to ascertain that only protected information has been withheld.

*Rule 13. Notice of agency actions*

Two commentators suggested that notice through the *Pennsylvania Bulletin* is not appropriate for cases involving denial of reimbursement and that the option of service by publication in the *Pennsylvania Bulletin* should be limited to cases in which other methods cannot be used or have failed.

A third commentator suggested that the Order: a) fails to address when a written notice of agency action is not provided, b) fails to establish standards for what constitutes effective written notice of agency action and c) deviates from Act 142 that allows a minimum of 30 days to appeal after receiving "notice" of agency action. The commentator suggested revision to recognize that a provider may obtain notice that the Department has taken a final action through conduct of the agency. The commentator suggested clarification of the following: a) that providers are authorized to file an appeal upon receipt of information sufficient to conclude that the Department has taken action adverse to the interests of provider, b) if the Department fails to give written notice of agency action, time for filing appeal should not run until the Department gives proper written notice of agency action and c) final versus preliminary agency action appeal timeframes.

*Response*

Act 142 contemplates that the Department must have undertaken some affirmative action in order for a right to a hearing to arise. 67 Pa.C.S. §§ 1101 (definition of "hearing"); 1102(a); 1102(b)(2). Under Act 142, a condition precedent to the filing of a request for hearing is that the

Department shall have given the provider "notice of departmental action." Act 142 clearly contemplates that any such notice shall be given in writing.

In some instances, Department regulations may specify how the Department or a program office gives notice of an agency action. See e.g. 55 Pa. Code § 1187.95(a)(4) (relating to general principles for rate and price setting). Rule 13 is not intended to modify or replace existing notice requirements, nor is it intended to add additional notice requirements to those already in place. Rule 13 has been revised to clarify that the Department or program office must give notice of an agency action in accordance with Departmental regulations that relate to the particular action involved. When departmental regulations do not specify the method by which notice must be given, the Bureau has revised Rule 13 to specify how the Department or program office must give notice and to clarify the circumstances in which notice may be given by publication in the *Pennsylvania Bulletin*.

*Rule 14. Service of pleadings and legal documents*

The Bureau has revised Rule 14 to specify the date on which service of pleadings and legal documents must be made and when service must be made by facsimile.

*Rule 18. Request for hearing*

Three commentators provided suggestions for revision of Rule 18(b). One commentator raised concerns that since Departmental actions and notices often do not contain extensive information, providers may not be able to respond with the specificity required by the Rule in the timeframe allowed. A second commentator suggested the deletion of the phrase "in detail" in (b)(2). A third commentator suggested that a copy of the transmittal letter providing notice of action rather than the entire notice be required, to save unnecessary paper storage and postage.

*Response*

The Department's written notices of agency actions are required to and generally contain sufficient information for providers to determine if and why they disagree with an agency action. For example, when the Department issues a notice of termination under 55 Pa. Code § 1101.77 (relating to enforcement actions by the Department), the notice states the basis for the action, the effective date of the action and whether and when the Department will consider re-enrolling the provider. See 55 Pa. Code § 1101.77(d). In addition, Department regulations have long required that all MA providers "explain in detail the reasons for [their] appeal" in their notices of appeal (55 Pa. Code § 1101.84(a)(4) (relating to provider right of appeal)), and, since January 1996, have required that appeals by MA nursing facility providers "state in detail the reasons why the facility believes the [Department's] decision is factually or legally erroneous and the specific issues that the facility will raise in its appeal." 55 Pa. Code § 1187.191(d)(2) (relating to nursing facility's right to appeal and to a hearing). The requirement for specificity is also consistent with Act 142, which allows a provider 90 days to amend their requests for hearing as a matter of right and then specifies that the Bureau must conduct a "de novo review of all factual and legal issues raised by a provider in the request for hearing."

The Bureau agrees with the suggestion that when the Department transmits notice of an agency action under cover of a letter to the provider, the provider need only attach a copy of the transmittal letter, rather than the entire notice, to its request for hearing.

*Rule 19(c). Timeliness and perfection of requests for hearing*

One commentator suggested that Act 142 does not preclude the Bureau from permitting additional amendments after the initial 90-day period. The commentator suggested that the limitation of amendments to a nunc pro tunc standard is inconsistent with 1 Pa. Code §§ 35.48—35.50 and that the limitation would preclude parties from stipulating to additional time. The commentator suggested that time limits for amendment are inconsistent with time limits on discovery and disclosure, and since discovery will usually be completed more than 90 days after the filing of a request for hearing, this is inconsistent with due process and permits the agency to hide relevant information and defeats proper adjudication on the merits. Under Rule 36 (relating to methods to discover additional information), discovery cannot begin until 45 days after filing a request for hearing.

Another commentator suggested that while Act 142 provides that a request for hearing may be amended within 90 days of filing, the statute does not prohibit subsequent amendments for good cause shown. The commentator suggested that to prohibit amendments after 90 days, or to apply nunc pro tunc standard, is unreasonable because the basis for the agency action may not be clear until after discovery or after receipt of the pre-hearing position paper or hearing testimony. The commentator suggested that the use of a liberal good cause rule for amendment to hearing requests should be applied.

*Response*

As noted in comments summarized under "General-Rules," providers have suggested that the Rules should provide for a just, speedy and inexpensive adjudicatory process. The Bureau agrees with providers that the rules set forth in the Order should promote this goal. In keeping with this goal, the Rules established by this Order are intended to encourage litigation practices that support prompt adjudications and that avoid unnecessary expense and undue burdens on the parties and on the MA Program.

Most providers know why they disagree with a Department determination when they file an appeal. In the relatively few instances where the reasons for the Department's actions may be unclear, the statute and the Rules automatically allow providers an additional 90 days to evaluate the Department's determination. This additional period should permit providers a sufficient amount of time to identify the bases for their appeals in the majority of cases. In reaching this conclusion, the Bureau considered the fact that, since 1996, departmental regulations have permitted nursing facility providers 90 days within which to amend their appeals as a matter of right, yet very few providers have seen the need to file amended appeals.

Upon consideration of the comments, however, the Bureau recognizes that, on rare occasions, there may be circumstances under which further amendments to a request for hearing might be warranted and could be allowed without undermining the goal of a just, speedy and prompt adjudicatory process. The Bureau has revised Rule 19 to allow additional amendments after the initial 90-day period under certain limited circumstances. First, an amendment after 90 days will be allowed if the provider establishes that the amendment is necessary because of fraud or breakdown in the administrative process. Second, an amendment after 90 days will be allowed if the provider establishes that (1) the amend-

ment is based upon additional information acquired after the expiration of the 90-day period which either contradicts information previously disclosed by the Department or provides new information not previously disclosed by the Department; and (2) the program office and any other parties to the appeal will not be prejudiced if the amendment is allowed.

Consistent with the requirements relating to position papers, the Bureau has also revised Rule 19 to prohibit an amendment to a request for hearing within 30 days of the commencement of the hearing in the provider appeal. If a provider seeks to amend its appeal within 30 days of the commencement of a hearing, the Bureau retains the discretion and flexibility under the Order to continue the hearing in order to permit the amendment but enable the program office to prepare an adequate response to the amended appeal.

*Rule 19(d)—Timeliness and perfection of requests for hearing*

One commentator suggested that this rule be revised to eliminate the requirement that a general objection is deemed to be a waiver of all objections to an agency's action, particularly where objections are required to be filed before completion of discovery.

*Response*

Rule 19(d) requires that providers to give the program office sufficient notice of the bases for their appeal so that the program office has a reasonable opportunity to respond. It is also intended to assist the Bureau in conducting an appropriate de novo review. As noted previously, under Act 142 and this Order providers have 90 days within which to amend their appeals as a matter of right. In addition, the Bureau has revised the rule to allow providers to amend their requests for hearing after the 90-day period has expired on the basis of after acquired evidence. The rules thus provide sufficient time to providers to comply with the specificity requirement.

*Rule 19(e)—Timeliness and perfection of requests for hearing*

One commentator suggested that the Bureau be required to notify the provider of the reason for dismissal of a provider's request for a hearing. The commentator suggested that a request that substantially complies with the technical filing requirements should not be dismissed by the Bureau on its own motion.

A second commentator requested that this rule provide for notice of the Bureau's proposed motion to dismiss and opportunity to be heard or to correct the filing.

*Response*

Upon consideration of the comments, the Bureau has added language to Rule 19 that requires the Bureau to issue a rule or order, with a date certain listed for response, upon a provider and to allow the provider who will be aggrieved by the Rule or Order an opportunity to object to the proposed dismissal or to establish that it should be permitted to amend its appeal.

*Rule 21—Limitations on the use of petitions for relief*

Two commentators suggested that Act 142 does not authorize the limitation of provider's rights to seek waivers of regulations through the Order and that such limitations must be promulgated through the Commonwealth Documents Law. They maintain that limiting waivers, petitions for relief and the ability to obtain declaratory relief from regulations to the context of a hearing request is contrary to the statute. They suggest



that because the Secretary of Public Welfare rules on waiver requests after receiving Bureau recommendations, there is no remaining right of appeal de novo, although Act 142 requires de novo review for all adjudications. A third commentator stated that this rule is too restrictive and that the Bureau should be given discretion to allow for corrections or amendments to “improperly constituted” appeals or petitions for relief. The commentator maintains that, under current state and Federal practice a provider has the opportunity to file an amended document and that providers should not be prohibited from pursuing a waiver or declaratory relief as a result of a technical issue.

*Response*

The Bureau has eliminated or revised the various provisions of the Order that would have prescribed rules of procedure relating to petitions for relief properly filed under 1 Pa. Code §§ 35.17—35.19. If there is no underlying “appealable agency action,” the procedures governing such petitions for relief are those set forth in the GRAPP. Where an appealable action has been taken by the Department, however, Act 142 sets forth the exclusive procedure to obtain review of and relief regarding that action, and this Order applies.

In consideration of the comments, the Bureau has revised the title of Rule 21 to clarify that it only applies to petitions for relief that involve an agency action. In addition, the Bureau has included a new provision in the rule that permits a provider to file a motion to convert a prior filed petition for relief to a request for hearing and transfer it to the Bureau for determination. Any such motion must be filed within the filing deadlines that otherwise apply to a request for hearing. The Bureau has otherwise retained Rule 21 as proposed. Consistent with Act 142, the effect of the rule is that all issues and requests for relief relating to an agency action, including requests for waiver of a regulation or a determination of the applicability or meaning of a regulation or policy, must be set forth in a proper and timely request for hearing.

*Rule 22. Supersedeas; General*

One commentator requested clarification of classes of Departmental cases in which actions by the Department are not effective until after a hearing. For example, if the Department intends that fines levied as penalties by the Department are to be effective and collected prior to the final adjudication of a matter, the Department should clarify this point here.

*Response*

When the Department gives written notice of an agency action, the notice specifies the date on which the action has or will become effective. Therefore, no additional clarification is necessary.

*Rule 22(f). Supersedeas; Sanctions*

One commentator suggested that Act 142 does not authorize the imposition of costs and sanctions without promulgation of a regulation through the rulemaking process. The same commentator requested clarification of “other appropriate sanctions.”

*Response*

Act 142 authorizes the Bureau to “issue a standing order establishing rules governing practice before the Bureau.” The authority to “govern practice” includes the inherent authority to enforce compliance with the rules of

practice. What is an appropriate sanction will depend on the facts of the particular case.

*Rule 22(g). Supersedeas; General*

One commentator suggested that this rule is contrary to Act 142 because it does not permit the Bureau to grant a supersedeas for good cause shown based upon evaluation of relevant circumstances. A second commentator suggested that this rule is too restrictive in requiring the dismissal of a request for supersedeas in a provider appeal is commenced by petition of relief. The commentator suggests that, consistent with current state and Federal practice, a provider should be given the opportunity to file an amended document.

*Response*

In consideration of the comments, the Bureau has revised Rule 22 to eliminate subsection (g) relating to petitions for relief. Petitions for relief filed pursuant to 1 Pa. Code §§ 35.17—35.19 are governed by GRAPP. The Order otherwise incorporates the language of Act 142.

*Rule 25. Filing for petitions to intervene*

One commentator requested clarification of the timeframe since the preamble for the proposed Order allowed 90 days for intervention, but the rule itself allows 60 days.

*Response*

The preamble to the proposed rule was in error. A petition to intervene must be filed within 60 days of the filing of a request for hearing.

*Rule 26(c). Answers generally*

One commentator suggested that since answers are required to be filed before discovery, the requirements of the Rule are too specific.

*Response*

With the possible exception of a dispositive motion, a party should be able to answer a motion or other legal document regardless of whether discovery has been completed. Dispositive motions are not due until after the close of discovery. See Rule 33(a)(5) and Rule 35(c)(1) (relating to disclosures).

*Rule 28. Consolidation of provider appeals*

One commentator suggested that consolidation provisions should permit providers to consolidate requests for hearings from the outset to ensure efficiency. The commentator also suggested that the presiding officer should be authorized to modify discovery limits in consolidated cases. Another commentator suggested that this rule is overly restrictive with respect to discovery limitations on consolidation issues.

*Response*

Act 142 contemplates that consolidation will occur only upon motion and only after individual provider appeals have been filed. 67 Pa.C.S. § 1102(e)(2)(vi). Keeping the rule as proposed will ensure that only those providers who are willing to have their appeals combined with others will be subject to consolidation, and will ensure that parties who are opposed to consolidation have the meaningful opportunity to offer opposition, instead of being presented with a fait accompli. It also is consistent with the Bureau’s internal docketing and case-tracking requirements.

If a provider asserts the need to conduct individual discovery in an appeal, this suggests that the facts and legal issues raised in the appeal may be sufficiently

unique to make consolidation inappropriate. Consolidation is only appropriate if there is a substantially similar or materially related issue of law or fact. Consequently, the Bureau expects that most consolidated appeals will not be appreciably more complex than individual appeals, and that additional discovery generally will be neither reasonable nor necessary. Where consolidation is permitted, Rule 36 allows the parties to request permission from the Bureau to exceed the discovery limits in particular cases. Therefore, the Bureau has the discretion and flexibility to address the discovery issue on a case-by-case basis upon an appropriate showing by providers that additional discovery is reasonable and necessary.

*Rule 28(f). Consolidation of provider appeals*

One commentator requested clarification of what constitutes prejudice.

*Response*

Prejudice means the non-moving party is placed at such a disadvantage that it would be impracticable to perform meaningful discovery or adequately present its claim.

*Rule 28(f). Consolidation of provider appeals*

One commentator suggested that the time limits for consolidation are unreasonable and requested an extension of the timeframe or allowance of exceptions to the timeframe based on serial as well as contemporaneous Departmental determinations.

*Response*

Under Rule 28, a Motion to Consolidate must be filed before the expiration of the 120-day discovery period authorized by Rule 33(2) (relating to prehearing procedures in certain provider appeals.) This rule allows an adequate time frame for the parties to determine whether a case or cases should be consolidated. Moreover, the Bureau expects that the Order will result in the prompt adjudication of provider appeals and, consequently, that there should be no need for several appeals be strung together. The Bureau also expects that, in cases where a provider has an issue that repeats from year to year, the prompt adjudication of the issue during the initially filed appeal should expedite the resolution of later-filed appeals that raise similar issues.

*Rule 30(b). Termination of provider appeals.*

One commentator suggested the rule should limit prejudice that the withdrawal of a request for hearing causes in order to reduce the number of appeals required to preserve issues that can affect payment for subsequent years. The commentator further suggested that the rule should limit prejudice in payment matters only to payments for the fiscal period at issue or that arise from the audit adjustments appealed, but should not extend to the validity of audit practice, or the application, validity or interpretation of a regulation.

A second commentator requested deletion of this rule. The commentator suggested that the rule is unnecessary because the withdrawal of the appeal in most cases makes an appeal of the same action impossible because the appeal would not be timely. The commentator states that the impact of 30(b) is contrary to doctrines relating to issue and claims preclusion as well as due process since the standard "all issues that were or could have been raised in the appeal" is too vague and uncertain.

*Response*

In consideration of the comments, the Bureau has revised the rule to make clear that the prejudice only applies to all issues that were or could have been raised

as to the agency action under appeal. Thus, for example, the withdrawal of an appeal of an audit would prevent the facility from thereafter contesting the audit adjustments contained in that audit, the validity of any audit practice undertaken in that audit or from alleging that the audit was in error because the Department misinterpreted or misapplied its regulations or applied invalid regulations. On the other hand, the withdrawal would not prevent the provider from filing an appeal relating to an audit for a different fiscal period and raising issues as to that audit, even those that are similar or identical to issues that were or could have been raised in the withdrawn appeal. The Bureau has also revised the rule to clarify the means by which a provider may withdraw its appeal prior to adjudication and the date on which any such withdrawal becomes effective.

*Rule 32. Expedited disposition procedure for certain appeals*

One commentator requested a definition of "program exception requests." The commentator suggested that if it includes requests under policy statements at 55 Pa. Code §§ 1187.21a and 1187.113a (relating to nursing facility exception requests and nursing facility replacement bed-statements of policy), then the rule is inconsistent with due process under *Millcreek Manor v. DPW*, 796 A.2d 1020 (Pa.Cmwth.Ct. 2002). The commentator contended that Act 142 does not permit the Department to limit matters for which discovery is as of right, but that the burden should be on the party to establish necessity for the use of expedited procedures, not for a party to establish the necessity for due process. The commentator suggested that that unless a party can show good cause why expedited disposition is appropriate, due process and the Administrative Agency Law require a presumption that it is not. A second commentator suggested deletion of this rule, as it is inconsistent with Act 142 that allows reasonable and necessary discovery in all proceedings.

Another commentator requested clarification as to why certain rules do not apply in an expedited action.

A fourth commentator questioned why expedited disposition would not apply to terminations or suspensions of Medical Assistance status, because such hearings will have a greater impact on a provider since such hearings are held only after the termination's effective date.

*Response*

Act 142 does not permit parties to conduct unlimited discovery as a matter of right. Act 142 specifies that, in holding hearings and issuing adjudications in provider appeals, the Bureau will, among other things, "allow reasonable and necessary discovery in the form of interrogatories, requests for the production of documents, expert reports, requests for admissions and depositions of witnesses and designees of parties, subject to case management plans and limitations as necessary to facilitate the prompt and efficient issuance of adjudications." In conformity with the statute, Rule 32 recognizes that the reasonableness and necessity of discovery is determined by the case in which it is sought. What is reasonable and necessary in some types of cases is neither reasonable nor necessary in others.

The types of cases listed in Rule 32 are cases that have traditionally been handled by both providers and the program offices in a somewhat less formal manner. The purpose of the rule is to preserve this practice while providing the opportunity for such discovery as is reasonable and necessary under particular circumstances. The balance reached in this rule for the listed cases best

accomplishes the dual goals of the legislature in making reasonable and necessary discovery available consistent with promoting prompt and efficient adjudications. Neither Act 142 nor rules of procedure applicable to other matters mandate or permit unlimited discovery. For example, both Federal rules and the Pennsylvania Rules of Civil Procedure limit discovery as appropriate to particular situations. See e.g. Pa.R.C.P. No. 1930.5 eliminating discovery in support matters unless authorized by a special order of court.

Rule 32 does not include nursing facility exception requests as one commentator suggested. The Bureau has revised the rule to clarify that the "program exception requests" referred to in this rule are those defined in 55 Pa. Code § 1150. Such matters have traditionally been handled in the less formal manner referred to previously.

As to the comment that an expedited disposition ought to be available in cases other than those listed in Rule 32, such as provider terminations, Rule 32 accommodates this request. The rule permits a party to ask the Bureau to apply all or any of the procedures of Rule 32 in any other case. Likewise, the rule permits a party to a Rule 32 case to request the Bureau to apply any or all of the procedures eliminated by Rule 32 in an individual case otherwise subject to the rule.

*Rule 33. Prehearing procedure in certain provider appeals*

One commentator suggested that the Order should allow providers to challenge the action of the Bureau; the commentator expressed concern that permitting the Bureau discretion "as it deems appropriate" is unchallengeable.

*Response*

Hearing Officers must have discretion to set deadlines and impose discovery limitations in order to ensure that cases move through the appeal process in an expeditious manner. As is the case in common pleas courts and other administrative tribunals, pre-hearing orders are not ordinarily subject to review. However, in extraordinary circumstances, pre-hearing orders may be reviewed under Rule 54 (relating to reconsideration of interlocutory orders).

*Rule 35(a) and (b). Disclosures*

One commentator suggested that the rule should be revised to provide consistent treatment between providers and the Department; if providers have to disclose their opinions then the Department should also be required to do so.

*Response*

Rule 35 is intended to impose commensurate disclosure obligations. The rule has been revised to make clear that a program office must include required documentation with its position paper and that any party that intends to rely on expert testimony must include a "statement of expert opinion" in its position paper.

*Rule 35(b). Disclosures*

Three commentators suggested that the Department should be required to submit to the provider a list describing all documents that it has deemed privileged or protected from disclosure and the basis for the protection claim. They further suggested that a provider should be permitted to seek the same relief and to identify documents in its possession that are protected such as trade secrets.

One commentator suggested that the requirements for mandatory initial disclosures should be more in conform-

ance with Rule 26(a) of the Federal Rules of Civil Procedure and that Departmental disclosures should not be limited to staff persons directly involved in agency action and those designated to testify, but should include all individuals likely to have discoverable information. Departmental disclosures should not be limited to items relied upon in issuing the agency action, but should include all items in possession of the Department that may be used to support the agency's position in the appeal.

One commentator suggested that the provider should not have differing initial mandatory disclosure burdens than the Department, but that both parties should be held to the same standard.

*Response*

As noted previously, Rule 35 has been revised so that it imposes commensurate disclosure obligations on providers and program offices. The mandatory initial disclosure requirements set forth in the rule are intended to ensure the parties will use them to provide meaningful information. They are not intended to encompass all information that the parties may want to obtain from each other, and they can be supplemented by discovery where needed. Among the issues that can be probed through discovery is the identification of withheld documents, or additional witnesses and documents.

*Rule 35(c)(1). Disclosures*

One commentator suggested that the provider should not be prejudiced by the Department's issuance of its position paper after the provider submits its paper. Another commentator suggested that the provider is prejudiced if the Department does not give its position paper. Another commentator suggested that the Department should not be allowed an additional 60 days after service of provider's position paper because it unduly prejudices the provider's case since the Department can evaluate the provider's position paper before the Department has to provide a complete and full statement of its position. They suggested simultaneous submission, plus a 45-day rebuttal or supplemental period to respond to the opposing party's position paper.

Three commentators objected to the disparity of the rule's effect as between providers and the Department and suggested that both parties should be held to the same standard if they fail to meet the position paper due date. At a minimum, the commentators suggested that the provider must be given time to review the Department's position paper before a hearing is scheduled. One commentator suggested that if the Department does not submit a position paper, it should be precluded from putting on a defense.

*Response*

Rule 35 contemplates that all parties to a provider appeal must prepare and exchange position papers. The rule requires providers to produce their position papers first and under the penalty of dismissal because providers bear the burden of proof and production in provider appeals. In imposing these requirements, the rule is patterned after the process used by the Federal Provider Reimbursement Review Board (PRRB) in Medicare reimbursement disputes.

In such matters, a Medicare provider contesting the determination made by a fiscal intermediary is required to present an initial position paper to the fiscal intermediary, which then has 60 days to evaluate the provider's position, determine whether any disputed issues can be

resolved and prepare its own position paper. PRRB rules also require the dismissal of a Medicare provider reimbursement appeal if the provider fails to file its position paper on time and notification to the Centers for Medicare and Medicaid Service (CMS) if the fiscal intermediary fails to file its position paper on time.

As in the Medicare process, this Order requires a provider to articulate the bases for its appeal and gives the program office a fixed period of time to evaluate the merits of the provider's position, and state whether and why they disagree with the provider's position on each issue in dispute. By compelling the parties to detail and assess each other's respective positions, the Order encourages prompt settlements in provider appeals. When settlements are not possible, it enables all parties and the Bureau to focus their efforts at hearing on the matters that are truly in dispute. Moreover, like the PRRB rules, the Order requires that providers prosecute their appeals in a regular and timely fashion. Further, like the PRRB rules, the Order does not permit the entry of a default judgment against the government.

The Order also ensures that providers will have sufficient time for providers to review the program office's position papers before a hearing is scheduled. Rule 33(a)(5) gives providers 60 days from the filing the program office's position paper to file dispositive motions. Rule 45 (relating to initiation of hearings) states that the Bureau will schedule a hearing only after it has ruled on any dispositive motions and consulted with the parties.

*Rule 35(c)(3) and (5). Disclosure of witnesses*

One commentator suggested that this rule is too restrictive and that parties should have the right to amend their witness list at a minimum for good cause shown, to include amendment in response to a witness identified by the other party. Another commentator questioned how the information regarding witnesses will be provided to assure there are no penalties if the identity of the witness has changed over time.

*Response*

The Bureau expects that, in the majority of cases, the parties will know who their witnesses are well in advance of the hearing. If, however, a party determines that a witness identified in its position paper will not be available or that it intends to offer the testimony of additional witnesses not identified in its position paper, the party may file a motion to amend its position paper for good cause under Rule 35(c)(4). The Bureau may permit the amendment as long as there is more than 30 days until the commencement of the hearing.

As a general rule, the Bureau will not permit a party to offer the testimony of any witness who has not been identified in the party's position paper. Upon consideration of the comments, the Bureau has determined to provide an exception to this general rule if the party seeking to offer the testimony of an undisclosed witness establishes that good cause exists to allow the testimony. The Bureau intends this exception to apply only in limited situations, such as where the death or illness of a previously disclosed witness within 30 days of hearing necessitates a substitute witnesses, or similar circumstances beyond the control of the party that otherwise demonstrate a need for relief. In determining whether good cause exists, the Bureau will consider, among other things, whether the testimony of the witness is critical to the party's case, why the identity of the witness was not disclosed previously, whether other parties would be prejudiced if the testimony is allowed, and whether

allowing the testimony will delay the prompt and efficient adjudication of the appeal. The Bureau also retains the discretion and flexibility under the rules to continue a hearing to allow other parties to conduct appropriate discovery regarding any newly identified witness.

*Rule 36(c). Methods to discover additional information*

Two commentators suggested that interrogatories and requests for admissions should not be limited to 10 each but should be allowed as of right. The same commentator also requested clarification as to whether a party can request a waiver of the limit. One commentator suggested that providers should be entitled to more than 3 depositions, particularly in licensing appeals.

*Response*

As noted previously, Act 142 does not permit parties to conduct unlimited discovery. It authorizes such "reasonable and necessary" discovery as may be permitted consistent with the "prompt and efficient" adjudication of provider appeals. The Order permits the use of the identified forms of discovery, subject to limitations, that, in the majority of cases will afford adequate discovery and a just, speedy and inexpensive administrative process. The Order allows for additional discovery beyond the limitations set forth in the rules by agreement of the parties or upon a showing that the statutory standard is met.

*Rule 36(c)(4)(ii). Methods to discover additional information*

Four commentators suggested that this rule is unduly burdensome and that depositions of senior Departmental staff, including the Secretary and deputies, should be allowed if the provider can demonstrate that the deposition will likely lead to discovery of relevant information not disclosed by other agency staff, or, if documents demonstrate the senior official has been personally involved in or has knowledge of the disputed action. This should be permitted without a Bureau order. One commentator suggested that if this shield is permitted for Departmental staff persons, the same shield should apply for senior provider staff as well. Commentators suggested clarification of knowledge of senior officials "which is not privileged"; this language should not allow a novel theory of executive privilege to shield Departmental staff.

*Response*

As noted previously, Act 142 does not authorize unlimited discovery, but only such reasonable and necessary discovery as may be permitted consistent with the just, speedy and inexpensive adjudication of a provider appeal. In the majority of cases, providers can obtain reasonable and necessary information relevant to their appeals from documents and other information provided by subordinate department staff. Upon consideration of the comments, the Bureau has revised the rule to permit a party to depose a senior department official, other than the Secretary, upon motion, if the party establishes to the Bureau's satisfaction that the official was personally involved in the disputed action and that the deposition is reasonable and necessary in light of the particular facts involved and will not delay the prompt and efficient adjudication of the provider appeal. The Bureau has also eliminated the requirement that a provider seeking to depose a senior departmental official establish that the official "has knowledge which is not privileged." This revision is not intended to waive any privilege that may exist, including executive or deliberative process privilege, but rather to shift the burden of asserting the privilege to the program office. The prohibition on deposing the Secretary has been

retained, since she is the ultimate adjudicator in the case on review of the Bureau determination.

*Rule 38(b)(3). Signing of disclosures, discovery requests, responses and objections*

One commentator suggested that sanctions should not be imposed for making discovery requests that are burdensome or expensive; instead, if a party believes that a request is unreasonable the party should file a motion seeking a protective order from the Bureau. The commentator suggested that opposing parties should not be required to guess whether particular requests may be deemed unreasonable or unduly expensive or burdensome. Another commentator suggested that Act 2002-142 does not provide authority to impose sanctions not imposed by GRAPP without promulgation through the rule-making process.

*Response*

Act 142 authorizes the Bureau to issue this Order to establish rules governing practice in provider appeals. This authorization includes the inherent authority to enforce compliance with the rules through the imposition of sanctions. Together with other rules, Rule 38 provides a procedure by which discovery disputes can be resolved in a manner that permits sanctions to be avoided in cases where a non-responding party does so because it is unduly burdensome. The rule also permits sanction to be imposed on parties that seeking inappropriate and unreasonable discovery. As in common pleas courts, the Bureau will determine whether a discovery request is unduly burdensome and expensive on a case-by-case basis.

*Rule 44. Voluntary mediation*

One commentator questioned whether the Bureau will propose another rule to establish a procedure for arbitration.

*Response*

Act 142 authorizes, but does not require, the Bureau to establish mediation programs to "promote the settlement of matters subject to its jurisdiction or to narrow issues subject to dispute through the use of mediation and arbitration." In Rule 44, the Bureau authorizes stays in provider appeals to permit parties to use the Office of General Counsel Mediation Program. The Bureau does not plan to establish an arbitration procedure at this time but will seek input from the regulatory advisory committee.

The Bureau has revised Rule 44 to eliminate the requirement that the mediator prepare and sign a report of the mediation activities. Instead, under the revised rule, the parties must jointly file a statement setting forth the status of mediation activities. The Bureau has also eliminated the requirements relating to settlements arrived at during the mediation process because the Bureau determined that there is no reason to treat settlements arrived at during mediation differently from other settlements. If a provider agrees to withdraw its appeal as a result of a settlement during the mediation process, Rule 30 applies.

*Rule 47. Burden of proof and production*

One commentator suggested an amendment to provide for instances in which the program office has the burden of proof, and suggested that the standard of proof should be included. A second commentator suggested that the burden of proof regarding imposition of a sanction including demand for overpayment should be on the Department as is true of current practice and required under

due process principles. The same commentator requested clarification of the differing burdens of proof in different kinds of cases. The commentator also suggested that Act 142 does not provide authority to amend GRAPP without rulemaking.

*Response*

Act 142 does not change the burden of proof in sanction cases or other provider appeals. Rule 47 correctly reflects the burden of proof in provider appeals. Act 142 authorizes the Bureau to establish rules governing practice in provider appeals and where the Bureau has established such rules, those rules, not GRAPP, apply. In this instance, however, the burden of production set forth in Rule 47 is in accord with GRAPP. The Bureau has changed the title of the rule to reflect that it relates to the burden of proof and the burden of production and has revised the rule to clarify that the presiding officer's determination to vary the order of production must be included in the record.

*Rule 48(a). Written testimony*

One commentator suggested an amendment to permit pre-filed testimony, as appropriate, without undermining the parties' ability to challenge the credibility and reliability of witnesses.

*Response*

In Rule 48(a), the Bureau recognizes the need, at times, for a party to file pre-filed testimony. In addition, the Bureau has clarified the rule to specify that the pre-filed testimony will be admitted only if the witness is available at hearing for cross-examination or the parties agree that the witness' presence is not required. The opposing party will have the ability to challenge the pre-filed testimony as indicated under Rule 48(b).

*Rule 51(b). Post-hearing briefs*

One commentator suggested that briefs should be filed in the order of the burden of proof. The same commentator suggested that the Order presumes a provider burden of proof, which is inconsistent with current Departmental practice and due process principles.

Another commentator suggested that the provider time frame for submitting briefs should be specific, such as within 30 days.

*Response*

The rule, which requires the provider to file its brief first, recognizes that the provider has the burden to demonstrate that the disputed action is erroneous for the reason identified in the provider's request for hearing. In consideration of the comments the Bureau has revised the rule to make clear that the provider's brief will be due on the date specified by the presiding officer which shall not be less than 30 days from the closing of the record unless the provider consents to a shorter period. The rule gives the presiding officer the discretion to allow the provider more than 30 days to submit a post-hearing brief depending on the difficulty and/or number of the issues involved in a case. The Bureau has also revised the rule to clarify that a party may waive the filing of post-hearing brief, but that if a party files a post-hearing brief, any disputed issue or legal theory not raised in its brief is waived.

*Rule 51(e). Post-hearing briefs*

One commentator suggested that this section is unclear and that it seems to require all parties to argue all issues in the post-hearing brief, even if the issues are not in dispute. The commentator suggested an amendment to

include only a disputed issue which is not argued shall be deemed waived, or provide for the parties to stipulate to particular issues.

*Response*

In consideration of the comment, the Bureau has revised Rule 51(3) to add the word "disputed" before the word "issue."

*Rule 55. Review of Bureau determination*

One commentator suggested that Rule 55 should make clear that the filing date of a request for review would be determined in the same way provided in Rule 19 (relating to timeliness and perfection of requests for hearings), and, therefore, the filing date of a request for review filed by mail would be the United State postmark date.

*Response*

Act 142 requires that the Bureau use the United States postmark date to determine the filing date of a request for hearing. It does not impose a similar requirement for requests for review by the Secretary. Under the Order, the filing date of a request for review is the date of receipt. The Bureau will seek input from the Advisory Committee on whether the regulations should permit use of the United States postmark date in determining the filing date of a request for review.

*Rule 55(f) and (i). Review of Bureau determination*

One commentator suggested a clarification as to when a request is deemed denied or approved by the Secretary's inaction.

*Response*

Consistent with Act 142, Rule 55 specifies that a request for review is deemed denied if the Secretary fails to act on the request within 30 days of its receipt. Rule 55 also specifies that if the Secretary grants a request for review within 30 days, but fails to enter a final order within 180 days, the Bureau determination is deemed approved by the Secretary and becomes the final adjudication of the Department.

*Rule 55(g). Review of Bureau determination*

One commentator suggested an amendment to permit a provider to submit a response to the Secretary's grant for review of particular issues raised by provider.

*Response*

The party filing a request for review should fully address the reasons why the Bureau's determination should be reversed in its request for review. The merits of the issues raised in the party's request and the timeliness of the request are factors that will be considered by the Secretary in deciding whether to grant review in a particular case. If the Secretary grants review, the opposing party is given an opportunity to file a response only as to the issues upon which the Secretary has granted review. In conducting her review, the Secretary will have the entire record available to her, including the briefs filed by the parties below.

*Rule 55(h). Review of Bureau determination*

One commentator suggested limiting the Secretary's review to 90 days. The commentator further suggested that failure of the Secretary to act in 90 days should result in provider's position being affirmed.

*Response*

Rule 55 reflects the time frames for Secretarial review provided in Act 142. Act 142 states that the Secretary has

180 days from the date of the order granting review to issue a final order. If the Secretary does not act with 180 days of granting review, Act 142 specifies that the Bureau's determination is deemed approved by the Secretary.

*Rule 57. Appeals*

One commentator suggested that the procedural requirements for judicial review be clearly enumerated.

*Response*

The procedures and requirements relating to appeals from final orders of the Department are contained in the Administrative Agency Law, 2 Pa. C.S. §§ 701—704 and the Pennsylvania Rules of Appellate Procedure.

*Other changes*

In addition to the changes discussed in the Public Comment section, the Bureau made several additional changes to correct typographical errors, enhance the clarity of the rules and conform to the changes previously discussed.

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-NOT-350A. No fiscal impact; (8) recommends adoption.

**Annex A**

**DEPARTMENT OF PUBLIC WELFARE  
BUREAU OF HEARINGS AND APPEALS**

**Standing Practice Order Pursuant to § 20.1 of Act  
2002-142 Establishing Rules Governing Practice  
And Procedure In Medical Assistance  
Provider Appeals**

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**Part I—Preliminary Provisions****Subpart A. General Provisions****Rule 1. Scope of rules.**

(a) This order is issued pursuant to Act 2002-142, § 20.1, 67 Pa.C.S. § 1102(g) (Act) (relating to hearings before the bureau). This order is effective July 1, 2003 and applies to provider appeals commenced on or after December 3, 2002.

(b) Except as set forth in subsections (c), (d) and (e), the rules adopted by this order govern practice and procedure in provider appeals. In those matters in which this order is inapplicable, the General Rules of Administrative Practice and Procedure set forth in Title 1 of the *Pennsylvania Code* (GRAPP) and applicable Departmental regulations apply.

(c) This order does not apply to appeals governed by 55 Pa. Code Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(d) This order does not apply to provider appeals commenced before December 3, 2002.

(e) The rules adopted by the order apply in cases filed on or after December 3, 2002 but before July 1, 2003, except as follows:

(1) Nonconformity of a pleading or legal document with this order shall not in itself be a basis for objection.

(2) Except for the time limits, schedules and periods specified in Rule 19 (relating to timeliness and perfection of requests for hearing), the time limits, schedules and periods specified in this order do not apply. When a rule sets forth a time limit, schedule or period, the parties may agree to an alternative time limit, schedule or period or the Bureau may issue an order specifying such alternative time limit or period as the Bureau deems appropriate.

(3) Rules 35 and 37 (relating to disclosures and supplementing disclosures and responses) do not apply.

**Rule 2. Construction and application of rules.**

(a) The rules adopted by this order shall be liberally construed to secure the just, speedy and inexpensive determination of provider appeals.

(b) Except to the extent that Appendix A to these rules provides to the contrary, these rules replace and supersede the General Rules of Administrative Practice and Procedure (GRAAP) To the extent that GRAAP applies in provider appeals, when the term "agency" is used in 1 Pa. Code Part II, the term "Bureau" is to be understood; when the term "participant" is used in 1 Pa. Code Part II, the term "party" is to be understood; and when the term "presiding officer" is used in 1 Pa. Code Part II, the term "presiding officer" is to be understood.

**Rule 3. Definitions.**

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

*Agency Action*—An adjudicative action of the Department or a program office that relates to the administration of the MA Program. The term includes the actions identified in 55 Pa. Code §§ 1101.84(a)—(c) (relating to provider right of appeal) and 1187.141(a) (relating to nursing facility's right to appeal and to a hearing) and

other actions relating to a provider's enrollment in, participation in, claims for payment or damages under, or penalties imposed under the MA Program.

*Bureau*—The Bureau of Hearings and Appeals.

*Department*—The Department of Public Welfare.

*Director*—The Director of the Bureau.

*Dispositive motion*—A motion that seeks a final determination of one or more of the issues in a provider appeal without the need for hearing or further hearing. The term includes: a motion to quash the provider appeal, a motion to dismiss the provider appeal, a motion for summary judgment, and a motion for partial summary judgment, but does not include a motion in limine.

*GRAPP*—The General Rules of Administrative Practice and Procedure set forth at 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

*Hearing*—Any of the following:

- (i) A provider appeal.
- (ii) A proceeding before a presiding officer for the purpose of creating a factual evidentiary record relative to the merits of one or more issues raised in a request for hearing.
- (iii) A proceeding conducted by a presiding officer for the purpose of resolving an interlocutory matter, including but not limited to a petition for supersedeas.

*Legal document*—A motion, answer, brief, petition to intervene, request for reconsideration of an interlocutory order, request for review by the Secretary, or other paper filed with the Bureau in a provider appeal, other than a pleading. The term does not include attachments or exhibits.

*Pa.R.C.P.*—Pennsylvania Rules of Civil Procedure.

*Party*—A provider, a program office, or an intervenor.

*Person*—An individual, partnership, association, corporation, political subdivision, municipal authority or other entity.

*Petition for relief*—A document filed pursuant to §§ 35.17, 35.18 or 35.19 of the GRAPP.

*Pleading*—A request for hearing, including any amendments thereto.

*Program office*—An office within the Department which is managed and operated by a person who reports directly to the Secretary, including a Deputy Secretary, or a bureau or other administrative unit of an office within the Department which is managed and operated by person who reports directly to a deputy secretary. The term does not include the Bureau.

*Provider*—Either (i) a person currently enrolled in the MA Program as a provider of services; or (ii) a person who has applied for enrollment in the MA Program as a provider of services; or, (iii) a person whose enrollment in the MA Program as a provider of services has been suspended or terminated by the Department.

*Provider appeal*—A proceeding to obtain review of an agency action that is commenced by a provider by filing a request for hearing.

*Request for hearing*—The pleading filed by a provider in order to commence a provider appeal.

*Secretary*—The Secretary of Public Welfare.

*Senior Department Official*—the Comptroller, the Chief Counsel of the Department, a person who works in the

Office of the Secretary or who reports directly to the Secretary, including a Deputy Secretary; or a director of a bureau within a program office.

*Supersedeas*—An order suspending the effect of an agency action pending the Bureau's determination in a provider appeal.

*Waiver request*—a request that the Secretary waive the application of a provision set forth in a Department regulation.

#### **Rule 4. Amendments to rules.**

(a) The Department retains continuing jurisdiction under 67 Pa.C.S. § 1106 (relating to regulations) to adopt regulations establishing rules of procedure as may be necessary to govern provider appeals.

(b) The Bureau will establish an advisory committee, including individuals experienced in proceedings before the Bureau and other administrative agencies, to provide assistance and guidance in the development and modification of regulations which may be promulgated under 67 Pa.C.S. § 1106.

(c) The Bureau may establish such forms as may be required to implement these Rules.

#### **Rule 5. Jurisdiction of the Bureau.**

(a) Except as provided in subsections (b), (c) and (d), the Bureau has exclusive original jurisdiction over all provider appeals.

(b) The Bureau has no jurisdiction to make a final determination on a waiver request included in a request for hearing. The Bureau will create a record and make a recommendation to the Secretary regarding the waiver request as specified in Rule 52(b) (relating to determinations and recommendations by the bureau).

(c) The Bureau has no jurisdiction to issue a final determination on the merits of an issue properly raised in a petition for relief.

(d) The Bureau's jurisdiction in provider appeals is subject to Rule 54 (relating to reconsideration of interlocutory orders) and Rule 55 (relating to review of bureau determinations).

(e) The Bureau has no jurisdiction in a provider appeal involving an agency action if Federal law or Federal regulations require the aggrieved provider to use Federal appeal procedures in order to contest the agency action.

#### **Subpart B. Time**

#### **Rule 6. Timely filing required.**

Pleadings and legal documents required or permitted to be filed under this part, the regulations of the Department or any other provision of law shall be received for filing at the Bureau within the time limits, if any, permitted for the filing. Except as provided in Rule 19(b) (relating to timeliness and perfection of requests for hearing), the filing date is the date of receipt by the Bureau, and not the date of mailing.

#### **Rule 7. Extensions of time.**

(a) Except when necessitated by the circumstances of the Bureau, no order or pre-hearing order shall continue a provider appeal or extend the time for doing any act required by these rules except upon written motion by a party filed in accordance with these rules.

(b) Where these rules establish a standard for an extension of time, a motion seeking such an extension shall be resolved by the application of that standard. In



the event that these rules do not otherwise establish such a standard, the motion shall be resolved by application of the rules set forth in 1 Pa. Code § 31.15 (relating to extensions of time).

## Part II—Documentary Filings

### Subchapter A. General Requirements

#### Filings Generally

##### Rule 8. Title.

(a) All legal documents in a provider appeal commenced by a request for hearing, other than the initial pleading, shall display a caption at the top of the first page in the following form:

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE  
BUREAU OF HEARINGS AND APPEALS**

[Name of Provider] v. [Name of Program Office]

BHA I.D. No.:

Docket No.:

[Descriptive Title of Document]

(b) The descriptive title of a legal document shall identify the party on whose behalf the filing is made. (E.g., Appellant's Motion to Compel Discovery.)

##### Rule 9. Form.

(a) Pleadings and legal documents shall conform to the requirements of 1 Pa. Code § 33.2 (relating to form) except that the font used must be at least 12 point.

(b) An original hard copy of a pleading bearing an original signature must be filed with the Bureau by personal delivery or first-class mail.

(c) A legal document may be filed with the Bureau in hard copy by first-class mail or personal delivery.

(d) A legal document may be filed by facsimile if the document does not exceed 20 pages in length, including attachments and exhibits. An executed hard copy of a document filed by facsimile shall be maintained by the filing party and produced at the request of the Bureau or other party.

##### Rule 10. Incorporation by reference.

Any legal document on file with the Bureau in a provider appeal, and any exhibits or attachments thereto, may be incorporated by reference into another legal document that is subsequently filed in the same provider appeal. A document may be so incorporated by reference to the specific document and prior filing in which it was physically filed, but not by reference to another document that incorporates it by reference.

#### Execution and Verification

##### Rule 11. Verification.

(a) Every pleading or legal document that contains an averment of fact not appearing of record or that contains a denial of fact shall be verified as specified in subsection (b).

(b) A verification of a pleading or legal document shall substantially conform to the following: I, (name of person signing verification), in my capacity as (title or statement describing relationship to the party submitting the document), hereby state that I am authorized to make this verification on behalf of (party submitting the document) and that the facts set forth in the (document being verified) filed in this matter are true and correct to the best of my knowledge, information, and belief, and that

this verification is being made subject to 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

#### Copies

##### Rule 12. Number of copies; copying of Bureau documents.

(a) Unless otherwise ordered by the Bureau, only the original of a pleading or a legal document shall be filed with the Bureau.

(b) One copy of any pleading or legal document filed with the Bureau will be served on each of the other parties to the provider appeal unless otherwise specified in these rules.

(c) Any document filed with the Bureau in a provider appeal is available for inspection and copying except that, if a document contains information protected by law against public disclosure, the document shall not be available unless and until the protected information has been redacted. When redaction is required, the person seeking access to or a copy of the document shall be required to pay the actual cost of redaction prior to the document being made available.

(d) Documents in the files of the Bureau shall not be removed from the Bureau's custody. A person provided with access to a document pursuant to (c) may make a photocopy of that document using a photocopier available at the Bureau at a charge of \$0.15 per page. Upon request the Bureau may, in its discretion, agree to make a photocopy and provide it to the person requesting access, in which case the charge shall be \$0.25 per page. In the event that a person wants a certified copy of a document, the copy shall be made by the Bureau at the rate of \$0.25 per page and, in addition, the fee for the certification shall be \$2.00 per document.

#### Subchapter B. Service of Documents

##### Rule 13. Notice of agency actions.

(a) In the absence of a Department regulation specifying the method in which notice of an agency action is given, the Department or a program office may give notice of an agency action by any of the following methods:

(1) Mailing a written notice of the action to a provider at the provider's most recent business address on file with the Department.

(2) Serving notice of the action in the manner provided in Pa.R.C.P. 400—441.

(3) By publication in the *Pennsylvania Bulletin* if the agency action applies to a class of providers or makes system-wide changes affecting more than a single provider.

(b) In the absence of a Department regulation specifying the content of a notice of an agency action, notice of an agency action must include the following:

(1) The effective date of the agency action.

(2) The basis for the agency action.

(3) The date the notice was deposited in the mail or otherwise served on the provider.

##### Rule 14. Service of pleadings and legal documents.

Service of pleadings and legal documents shall be made on the same day the pleading or legal document is filed with the Bureau as follows:

(1) *Pleading.* The provider that files a pleading shall serve a copy on:

(i) The program office that initiated the agency action in dispute; and,

(ii) The Department's Office of General Counsel.

(2) *Petition for supersedeas.* The provider that files a petition for supersedeas shall serve a copy of the petition on:

(i) The program office that initiated the agency action in dispute; and,

(ii) The Department's Office of General Counsel.

(3) *Legal document.* The party that files a legal document in a provider appeal shall serve a copy of the document on all other parties to the appeal.

(4) *Method of service.*

(i) Service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, one copy of the pleading or legal document.

(ii) When a legal document is filed by facsimile, service shall be made by facsimile in addition to the method set forth in subparagraph (i).

#### **Rule 15. Proof of Service.**

A certificate of service in the form prescribed in Rule 16 (relating to certificate of service) shall accompany and be attached to a pleading or legal document filed with the Bureau.

#### **Rule 16. Certificate of Service.**

Each certificate of service shall substantially conform to the following:

I hereby certify that I have this day served the foregoing document upon:

(Identify name and address of each person served) by (Indicate method of service).

### **Subchapter C. Miscellaneous Provisions**

#### **Amendments and Withdrawals of Legal Documents**

#### **Rule 17. Amendment and withdrawal of legal documents.**

(a) A party may amend a legal document, other than a position paper, by filing an amendment with the Bureau at any time unless the Bureau otherwise orders.

(1) An amendment to a legal document shall be deemed filed as of the date of receipt by the Bureau, unless the Bureau otherwise orders.

(2) A position paper may be amended as specified in Rule 35(c)(4) (relating to disclosures).

(b) A party may withdraw a legal document by filing a motion for leave to withdraw the document. The motion will be granted or denied by the Bureau as a matter of discretion.

### **Part III—Provider Appeals**

#### **Subchapter A. Requests for Hearing, Petitions for Relief and Other Preliminary Matters**

##### **Request for Hearings**

#### **Rule 18. Request for hearing.**

(a) *General.*

(1) A provider that is aggrieved by an agency action may appeal and obtain review of that action by the Bureau by filing a request for hearing in accordance with these rules.

(2) A provider is aggrieved by an agency action if the action adversely affects the personal or property rights, privileges, immunities, duties, liabilities or obligations of the provider.

(3) When a provider files a request for hearing to contest an agency action, the program office that issued the notice of the agency action is a party to the provider appeal.

(b) *Content.* A request for hearing shall conform to the following:

(1) The request shall set forth the name, address and telephone number of the provider.

(2) The request shall state in detail the reasons why the provider believes the agency action is factually or legally erroneous, identify the specific issues that the provider will raise in its provider appeal, and specify the relief that the provider is seeking.

(i) If the provider is challenging the validity of a regulation or statement of policy in its provider appeal, the provider shall state such challenge expressly and with particularity, and shall identify the regulation or statement of policy involved.

(ii) If the provider is seeking relief from an agency action, in whole or in part, through waiver of the application of a regulation, the provider shall state its waiver request expressly and with particularity and shall identify the regulation involved.

(iii) A provider may not request a declaratory order or an order that the Department should be required to promulgate, amend or repeal a regulation as relief in a request for hearing. Any such request shall be set forth in a petition for relief in accordance with 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations).

(3) If the provider received written notice of the agency action by mail or by personal service, the provider shall attach to the request for hearing a copy of the transmittal letter forwarding the written notice and the first page of the written notice, or, if there is no transmittal letter, a copy of the entire written notice. If the provider received written notice of the agency action by publication in the *Pennsylvania Bulletin*, the provider shall identify the date, volume and page number of the *Pennsylvania Bulletin* in the request for hearing.

#### **Rule 19. Timeliness and perfection of requests for hearing.**

(a) Except as authorized in Rule 20 (relating to appeals nunc pro tunc), jurisdiction of the Bureau will not attach to a request for hearing unless the request for hearing is in writing and is filed with the Bureau in a timely manner, as follows:

(1) If the program office gives notice of an agency action by mailing the notice to the provider, the provider shall file its request for hearing with the Bureau within 33 days of the date of the written notice of the agency action.

(2) If written notice of an agency action is given in a manner other than by mailing the notice to the provider, a provider shall file its request for hearing with the Bureau within 30 days of the date of the written notice of the agency action.

(b) If a provider files a request for hearing by first-class mail, the United States postmark appearing upon the envelope in which the request for hearing was mailed shall be considered the filing date of that request for

hearing. If the provider files a request for hearing in any other manner, or if the envelope in which the provider's request for hearing was mailed bears a postmark other than a United States postmark, the date the request for hearing is received in the Bureau will be considered the filing date.

(c) Except as permitted in Rule 20(b) (relating to appeals nunc pro tunc), a request for hearing may be amended only as follows:

(1) A provider may amend a request for hearing as a matter of right within 90 days of the filing date of the request for hearing.

(2) Upon motion of the provider or in response to a Rule or Order issued pursuant to subsection (f). The Bureau may permit a provider to amend a request for hearing more than 90 days after the filing of a request for hearing if the provider establishes either of the following:

(i) The amendment is necessary because of fraud or breakdown in the administrative process.

(ii) Both of the following conditions are met:

(A) The amendment is based upon additional information acquired after the expiration of the 90-day period that contradicts information previously disclosed by the Department or provides entirely new information not previously disclosed by the Department.

(B) The program office and other parties to the appeal will not be prejudiced if the amendment is allowed.

(d) Any legal or factual objection or issue not raised in either a request for hearing filed within the time prescribed in subsection (a) or in an amended request for hearing filed pursuant to subsection (c) shall be deemed waived. A general objection to an agency action shall be deemed a failure to object and shall constitute a waiver of all objections and issues relating to an action.

(e) The Bureau will dismiss a request for hearing, either on its own motion or on motion of a program office, if a provider fails to file its request in accordance with the time limits specified in subsection (a).

(f) The Bureau will dismiss a request for hearing on its own motion or a motion of the program office if the following conditions are met:

(i) The provider's request for a hearing fails to conform to the requirements of Rule 18(b) (relating to request for hearing).

(ii) The 90-day time period for amendments specified in paragraph (c)(1) has expired.

(iii) The provider fails to establish that an amendment should be permitted pursuant to paragraph (c)(2).

(g) If the dismissal is based upon motion of the Bureau, the Bureau will issue a rule or an order to show cause, with a date certain listed therein, and serve that rule or order to show cause upon all parties to the appeal.

#### **Rule 20. Appeals nunc pro tunc.**

(a) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file a request for hearing nunc pro tunc pursuant to the common law standard applicable in analogous cases in courts of original jurisdiction.

(b) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file an amendment to a request for hearing nunc pro tunc pursuant to the common law standard applicable in analogous cases in courts of original jurisdiction.

(c) The Secretary, upon written motion and for good cause shown, may grant leave to a party to file a request for review of a Bureau determination by the Secretary nunc pro tunc pursuant to the common law standard applicable in analogous cases in courts of original jurisdiction.

### **Petitions**

#### **Rule 21. Limitations on the use of Petitions for Relief.**

(a) *Waiver requests.* A provider may include a waiver request in a petition for relief only if the regulation that is the subject of the waiver request is not a basis for an agency action involving the provider. If an agency action involving the provider depends, in whole or in part, upon the application of a regulation of the Department, a provider aggrieved by that agency action may only present a waiver request pertaining to that regulation in the context of a request for hearing filed in accordance with Rule 18 (relating to requests for hearing). To the extent that the waiver sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(b) *Request for declaratory relief.* A provider may include a request for declaratory relief in a petition for relief only if the relief sought by the provider would not modify or alter an agency action involving the provider. If the requested relief would modify an agency action involving the provider, the provider may only seek such relief in the context of a request for hearing filed in accordance with Rule 18 (relating to requests for hearing). To the extent that a request for declaratory relief is sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(c) *Request for issuance, amendment, or deletion of regulations.* The sole means by which a provider may formally petition the Department for the issuance, amendment, or deletion of a regulation or statement of policy is by filing a petition for relief.

(d) If a provider filed a petition for relief prior to the date of an agency action in which it has sought relief in connection with or relating to that agency action, the provider may file a motion to have the petition for relief transferred to the Bureau and deemed a request for hearing. Any such motion must be filed within the time allowed for the filing of a request for a hearing specified in Rule 19(a) (relating to timeliness and perfection of requests for hearing).

### **Supersedeas**

#### **Rule 22. General.**

(a) The filing of a request for hearing does not act as an automatic supersedeas. However, a provider who has filed a request for hearing may petition the Bureau to grant a supersedeas of the agency action. The Bureau may, upon good cause shown, grant a provider's petition for supersedeas in accordance with Rule 24 (relating to circumstances affecting grant or denial).

(b) A petition for supersedeas must be set forth in writing and may be filed at any time during a provider appeal.

(c) The Bureau will not issue a supersedeas without first conducting a hearing, but a hearing may be limited pursuant to subsection (e). The Bureau, upon motion or

sua sponte, may direct that a prehearing conference be held before scheduling or holding a hearing on a supersedeas.

(d) A hearing on a supersedeas, if necessary, shall be held expeditiously—if feasible within 2 weeks of the filing of the petition—taking into account the availability of the presiding officer and program office staff, and taking into account the urgency and seriousness of the problem to which the order or action of the Department applies. If good cause is shown, the hearing shall be held as soon as possible after the filing of the petition.

(e) If necessary to ensure prompt disposition, and at the discretion of the Bureau, a supersedeas hearing may be limited in time and format, with parties given a fixed amount of time to present their entire case, and with restricted rights of discovery or of cross-examination.

(f) The Bureau may impose costs or other appropriate sanctions on a party that files a petition for supersedeas in bad faith or on frivolous grounds.

**Rule 23. Contents of petition for supersedeas.**

(a) A petition for supersedeas shall plead facts with particularity and shall be supported by one of the following:

(1) Affidavits prepared as specified in Pa.R.C.P. 76 and 1035.4 (relating to definitions; and motion for summary judgment), setting forth facts upon which issuance of the supersedeas may depend.

(2) An explanation of why affidavits have not accompanied the petition if no supporting affidavit is submitted with the petition for supersedeas.

(b) A petition for supersedeas shall state with particularity the citations of legal authority the petitioner believes form the basis for the grant of supersedeas.

(c) A petition for supersedeas may be denied upon motion made before a supersedeas hearing or during the proceedings, or sua sponte, without hearing, for one of the following reasons:

(1) Lack of particularity of the facts pleaded.

(2) Lack of particularity or inapplicability of the legal authority cited as the basis for the grant of the supersedeas.

(3) An inadequately explained failure to support factual allegations by affidavit.

(4) A failure to state grounds sufficient for the granting of a supersedeas.

**Rule 24. Circumstances affecting grant or denial.**

(a) The Bureau, in granting or denying a supersedeas, will be guided by relevant judicial precedent. Among the factors to be considered:

(1) Irreparable harm to the provider.

(2) The likelihood of the provider prevailing on the merits.

(3) The likelihood of injury to the public or other parties.

(b) A supersedeas shall not be issued if injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect. If state law or federal law or regulation require that an action take effect prior to the final determination of an appeal, injury to the public health, safety or welfare shall be deemed to exist.

(c) In granting a supersedeas, the Bureau may impose conditions that are warranted by the circumstances, including the filing of a bond or the posting or provision of other security.

**Intervention**

**Rule 25. Filing of petitions to intervene.**

Petitions to intervene and notices of intervention in a provider appeal may be filed at any time following the filing of a request for hearing but in no event later than 60 days from the filing date on the provider's request for hearing, unless for extraordinary circumstances and for good cause shown, the Bureau authorizes a late filing.

**Answers**

**Rule 26. Answers generally.**

(a) No answer to a pleading is required.

(b) Answers to legal documents, if permitted or required by these Rules, shall be filed with the Bureau within 20 days after the date of service of the legal document, unless: (1) a different period is specifically required by these rules; or (2) for cause, the Bureau with or without motion shall prescribe a different time, but in no case may an answer be required in less than 10 days after the date of service.

(c) Answers shall be in writing and conform to the requirements of these Rules. Answers shall admit or deny specifically and in detail each material fact asserted in the legal document answered and shall state clearly and concisely the facts and law relied upon.

**Rule 27. Answers to petitions to intervene.**

(a) A party may file an answer to a petition to intervene, and in default thereof, may be deemed to have waived an objection to the granting of the petition.

(b) Answers shall be filed within 20 days after the date of service of the petition, unless for cause the Bureau with or without motion shall prescribe a different time.

**Consolidation**

**Rule 28. Consolidation of provider appeals.**

(a) *Individual provider appeals.* Each provider that wishes to appeal an agency action shall file an individual request for hearing in its own name, without joining any other provider.

(b) *Consolidation by Motion.* The Bureau, on timely motion, may order that a provider appeal be consolidated with one or more other provider appeals if the Bureau determines that the provider appeals in question involve substantially similar or materially related issues of law or fact and that consolidation is otherwise appropriate.

(c) *Appropriateness.* For purposes of this rule, consolidation is appropriate if it will not prejudice the ability of the non-moving party to perform adequate discovery or to adequately present its claim or defense, and if it will not unduly delay the adjudication of the earlier-filed matter.

(d) *Motions.* No provider appeal shall be consolidated except upon motion filed by one or more parties. In addition to the general requirements for motions set forth in Rule 39, any motion for consolidation shall: (1) identify the issues of law raised in each provider appeal and indicate the extent to which each is shared or distinct; (2) identify the material facts that serve as a basis for each appeal and indicate the extent to which each of these facts is shared or distinct; and (3) the justifications or advantages that support consolidation.

(e) *Answers.* In addition to the general requirements for answers to motions set forth in Rule 27 (relating to answers to petitions to intervene), any answer to a motion for consolidation shall explain how consolidation would, if allowed, adversely affect the non-moving party's ability to conduct and complete discovery, or its ability to present its claims or defenses.

(f) *Deadline for Motions to Consolidate.* A motion to consolidate shall be untimely as to a provider appeal if it is filed after the date set for the conclusion of discovery in that provider appeal. An untimely motion to consolidate shall only be granted with the consent of all non-moving parties.

(g) *Consent of Other Providers.* In the event that a provider seeks to consolidate its provider appeal with a provider appeal filed by a different provider, the motion for consolidation shall be deemed to be opposed by the other provider unless an affirmative statement to the contrary is set forth in the motion.

(h) *Service.* A motion for consolidation and any answer thereto shall be served on each person that is a party to any of the provider appeals for which consolidation is sought.

(i) *Effect of Consolidation Upon Discovery.* If the Bureau grants a provider's motion to consolidate, the discovery, if any, available to all providers in the consolidated appeals shall, in the aggregate, comply with the limitations specified in Rule 36(c) (relating to limitations).

#### **Amendments and Withdrawals of Provider Appeals**

##### **Rule 29. Amendments of requests for hearing.**

No amendments to a request for hearing shall be permitted except as specified in Rule 19(c) (relating to timeliness and perfection of appeal) and Rule 20(b) (relating to appeals nunc pro tunc).

##### **Rule 30. Withdrawal of provider appeals.**

(a) A provider may withdraw or end its provider appeal prior to adjudication by one of the following:

(1) The provider notifies the Bureau in writing that it is withdrawing its provider appeal.

(2) The parties to a provider appeal sign a written Stipulation of Settlement in which the provider agrees to withdraw the provider appeal.

(b) When a provider appeal is withdrawn prior to adjudication, the withdrawal shall be with prejudice as to all issues relating to the disputed agency action that were or could have been raised in the appeal.

(c) Unless the written notice or stipulation of settlement provides otherwise, a withdrawal of a provider appeal pursuant to this Rule shall be effective on the date the written notice or stipulation of settlement is received by the Bureau.

#### **Subchapter B. Prehearings Procedures and Hearings**

##### **General**

##### **Rule 31. Waiver of hearings.**

A hearing need not be held if any of the following occur:

(a) The provider waives its right to hearing.

(b) The parties stipulate the material facts or agree to submit direct and rebuttal testimony or documentary evidence in affidavit form (sworn or affirmed on personal knowledge) or by deposition.

(c) The Bureau determines that there are no material facts in dispute.

##### **Rule 32. Expedited disposition procedure for certain appeals.**

(a) This rule shall apply to all provider appeals involving the denial of claims for payment through the prior authorization process, the denial of requests for pre-certification, the recovery of overpayments or improper payments through the utilization review process, the denial of claims upon prepayment review, the denial of claims for payment pursuant to 55 Pa. Code § 1101.68 (relating to invoicing for services), the denial, termination or suspension of an exceptional DME grant (as defined in 55 Pa. Code § 1187.51 (relating to definitions)), and the denial of a program exception request filed pursuant to 55 Pa. Code § 1150.63 (relating to waivers).

(b) A request for hearing in a provider appeal subject to this rule shall: (1) be submitted in writing to the Bureau within the time limits specified in accordance with Rule 19(a) (relating to timeliness and perfection of appeal); (2) include the information specified in Rule 18 (b) (relating to request for hearing); and, (3) must include all relevant supporting documentation. The provider shall send a copy of its request for hearing to the program office issuing the notice of the agency action at the same time it files its request with the Bureau.

(c) Unless the information has already been exchanged, each party shall give to the other parties any document that it will introduce as an exhibit and a list of any persons, including medical or other experts, that it will call as a witness at the hearing.

(d) The Bureau will promptly schedule a hearing taking into due consideration the availability of expert witnesses.

(e) The following rules do not apply to provider appeals subject to this rule:

(1) Rule 8 (relating to title).

(2) Rule 9 (relating to form).

(3) Rule 11 (relating to verification).

(4) Rule 14(1)(ii) (relating to service of pleadings and legal documents).

(5) Rule 15 (relating to proof of service).

(6) Rule 16 (relating to certificate of service).

(7) Rule 33 (relating to prehearing procedure in certain provider appeals).

(8) Rule 35 (relating to disclosures).

(9) Rule 36 (relating to methods to discover additional information).

(10) Rule 37 (relating to supplementing disclosures and responses).

(11) Rule 38 (relating to signing of disclosures, discovery requests, responses and objections)

(12) Rule 41 (relating to discovery motions).

(13) Rule 42 (relating to dispositive motions), except for a motion to dismiss based upon timeliness.

(14) Rule 44 (relating to voluntary mediation).

(15) Rule 45 (relating to initiation of hearings).

(16) Rule 51 (relating to posthearing briefs).

(f) Upon motion of a party, and for good cause shown, the Bureau may order that a provider appeal identified in subsection (a) be exempt from this rule or may order that

one or more of the rules identified in subsection (e) apply in whole or in part to the appeal. In the case of a motion seeking an order to apply Rule 35 (relating to disclosures) and Rule 36 (relating to methods to discover additional information) to a provider appeal identified in subsection (a), in order to show good cause, the moving party must establish that the disclosures or discovery will not prevent the prompt and efficient adjudication of the appeal and are reasonable and necessary given the facts involved in the appeal.

(g) Upon joint motion of the parties to a provider appeal, the Bureau may order that this rule applies to a provider appeal not identified in subsection (a).

(h) A motion to exempt an appeal from this rule under subsection (f) and a joint motion to apply this rule to an appeal under subsection (g) may be filed with the request for hearing but shall be filed no later than 30 days from the filing date of the request for hearing in the provider appeal.

#### **Prehearing Procedures and Prehearing Conferences**

##### **Rule 33. Prehearing procedure in certain provider appeals.**

(a) Upon the filing of a request for hearing, the Bureau will issue a prehearing order specifying all of the following.

(1) The parties shall make disclosures in accordance with Rule 35 (relating to disclosures).

(2) All discovery requests shall be served within 90 days of the date of the prehearing order and that all discovery shall be concluded within 120 days of the date of the prehearing order.

(3) All motions to compel discovery shall be filed within 30 days of the close of discovery.

(4) Any other miscellaneous prehearing motions, including motions in limine, shall be filed within 60 days of the date of filing of the program office's position paper.

(5) Dispositive motions shall be filed within 60 days of the date of the filing of the program office's position paper.

(b) The parties may, within 30 days of the date of the prehearing order, submit a Joint Proposed Case Management Order to the Bureau that proposes alternative dates for completion of the matters specified in paragraphs (1)—(5) of subsection (a), or that agrees to discovery beyond the limitations set forth in Rule 36(c)(1)—(4) (relating to methods to discover additional information).

(c) The Bureau may issue subsequent prehearing orders incorporating the alternate dates and discovery limitations proposed by the parties or specifying other dates and discovery limitations that the Bureau deems appropriate, except that the Bureau will not establish dates or impose limitations that are more restrictive than the dates or limitations otherwise provided for in these rules without the agreement of all parties to the appeal.

##### **Rule 34. Conferences.**

(a) The Bureau, on its own motion or on motion of a party, may hold a conference either prior to or during a hearing for the purpose of facilitating settlement, adjustment of the proceeding or any issue therein, or other matters to expedite the orderly conduct and disposition of a hearing.

(b) A stipulation of the parties or order of the Bureau as a result of the conference shall be binding upon the parties.

#### **Disclosures and Discovery**

##### **Rule 35. Disclosures.**

(a) *Duty of Disclosure.* A party to a provider appeal commenced by a request for hearing must, without awaiting a discovery request, disclose information to each other party as specified in this section.

(b) *Mandatory Initial Disclosures.*

(1) The program office shall disclose:

(i) The name, title, business address and telephone number of each staff person directly involved in the agency action; and, if different, the name, title, business address and telephone number of any officials or staff designated to testify on its behalf regarding the agency action and the issues on which designated person will testify; in the case of an audit appeal, the program office will at a minimum identify every auditor involved in the audit and every audit supervisor and audit manager who reviewed the audit report; and,

(ii) A copy of, or a description by category and location of, all documents, data compilations, and tangible things, not privileged or protected from disclosure, that were relied upon in issuing the agency action, or that formed the basis for the agency action.

(2) The provider shall disclose:

(i) The name, title, business address, and telephone number of every person who provided facts, opinions, or other information that were relied upon in drafting the request for hearing or petition for supersedeas, if any, or that support or form the basis for, the allegations contained therein; and, and, if different, the name, title, business address and telephone number of any officials or staff designated to testify on its behalf regarding the agency action and the issues on which designated person will testify; and,

(ii) A copy of, or a description by category and location of, all documents, data compilations, and tangible things, not privileged or protected from disclosure, that were relied upon in drafting the request for hearing or petition for supersedeas, if any, or that support or form the basis for, the allegations contained therein; and, in a case where a provider alleges in its request for hearing that its costs or its claim for payment is supported by documents, the provider shall disclose the supporting documents.

(3) The parties shall make their initial mandatory disclosures within 45 days of the date of the Bureau's initial prehearing order, unless a different time is set by stipulation of the parties or by the prehearing order of the Bureau.

(4) A party shall make its initial disclosures based on the information in its possession or otherwise then reasonably available to it. A party shall not be excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(5) An opposing party has no obligation to respond to a discovery request made pursuant to Rule 36 (relating to methods to discover additional information) until the party that propounded the request has made its mandatory disclosures in compliance with this subsection. A provider whose initial mandatory disclosure identifies documents in the possession of the Department or pro-

gram office but fails to provide copies of the provider's own records or documents in support of one or more of the issues raised in the provider's request for hearing shall not be in compliance with this subsection.

(c) *Position papers.*

(1) *General requirements.*

(i) The provider shall file its position paper and required documentation with the Bureau and serve it on the program office within 60 days of the close of discovery or such other date as may be specified in the Bureau's prehearing order. If the provider fails to meet the position paper due date or fails to supply the Bureau with the required documentation, the Bureau will dismiss the provider's appeal.

(ii) The program office shall file its position paper and required documentation with the Bureau and serve it on the provider within sixty (60) days of the date of service of provider's position paper or such other date as may be specified in the Bureau's prehearing order. If the program office fails to meet the position paper due date, the Bureau will schedule the case for hearing and will notify the Chief Counsel of the Department.

(2) *Extensions.* The Bureau disfavors requests for extensions of time to file position papers. The Bureau may grant an extension if: (i) a party submits a written request for extension; (ii) the request is received by the Bureau in time for it to review the matter prior to the due date; and, (iii) the party establishes that good cause exists to warrant an extension. Failure to complete discovery before the due date of the position paper will ordinarily not be considered sufficient cause to extend the deadline, unless the failure is due to the non-cooperation of the other side. A request for extension should be considered denied unless the Bureau affirmatively grants the extension in writing before the papers are due.

(3) *Content of position papers.*

(i) *Provider.* For each issue identified in its request for hearing or amended request for hearing, the provider's position paper shall state the relevant facts and present arguments setting forth the provider's position. Specifically, the provider shall include for each issue: a summary of the pertinent facts and circumstances, citations to the relevant statutory provisions, regulations, and other controlling authorities, the monetary amount in dispute, if any, and an explanation showing how the amount was computed and any other relief sought by the provider in connection with the issue. In addition, the provider shall provide for each issue the name and business address of every witness whose testimony the provider will present and a copy of every document that the provider will offer into evidence to support its position with respect to the issue.

(ii) *Program office.* For each issue identified in the provider's position paper, the program office's position paper shall state whether the program office accepts or disputes the provider's summary of the pertinent facts and circumstances, the provider's citations to the relevant statutory provisions, regulations, and other controlling authorities, and the provider's computation of the monetary amount in dispute. If the program office disputes the facts, citations or monetary amount, the program office shall provide a counterstatement of the items in dispute. The program office's position paper must also identify any additional issues not addressed by the provider that the program office believes should be determined by the Bureau. For each such issue, the program office shall include a summary of the pertinent facts and

circumstances, and citations to the relevant statutory provisions, regulations, and other controlling authorities. In addition, the program office shall provide the name and business address of every witness whose testimony the program office will present and a copy of every document that the program will offer into evidence to support its position on each issue identified in its position paper.

(iii) *Statement regarding expert opinions.* For each issue, a party's position paper shall include a section that addresses the party's reliance upon an expert. The party shall state whether its position depends, in whole or in part, upon the judgment, opinion, or testimony of a person who, if called to testify, would be called as an expert. Where a party's position depends, at least in part, upon the judgment, opinion, or testimony of such a person, the party's position paper shall include a "statement of expert opinion." Consistent with the requirements of Pa.R.C.P. No. 4003.5 (relating to discovery of expert testimony, trial preparation material), and unless the Bureau orders to the contrary, each such statement shall: (A) identify the expert by name and address; (B) state the subject matter on which the expert is expected to testify; (C) identify the substance of the facts and opinions to which the expert is expected to testify; (D) summarize the grounds for each opinion to which the expert is expected to testify; and (E) be signed by the expert.

(4) *Amendments.* The Bureau may permit a party to amend a position paper upon motion of the party and for good cause shown except that no amendment to a position paper shall be permitted within 30 days of the commencement of the hearing in the provider appeal.

(5) *Penalties for Noncompliance.* A party shall not be permitted to offer the testimony of any witness at a hearing on a provider appeal unless either the party disclosed the identity of the witness in the party's position paper or the party establishes that there is good cause to permit the testimony of the witness. A party shall not be permitted to introduce a document into evidence at a hearing on a provider appeal unless the party identified the document as an exhibit and served the other parties to the provider appeal with a copy of the document at the time the party filed its position paper with the Bureau.

### **Rule 36. Methods to Discover Additional Information.**

(a) *Authorized Forms of Discovery.* Once the time period for mandatory disclosures has elapsed, a party to a provider appeal commenced by a request for hearing may obtain discovery by one or more of the following methods: interrogatories, requests for the production of documents, expert reports, requests for admissions and depositions of witnesses and designees of parties.

(b) *General Scope of Discovery.*

(1) Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party in a provider appeal, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(2) Except to the extent inconsistent with or as otherwise provided in this Order, discovery shall be governed by the relevant Pa.R.C.P. applicable to the form of discovery authorized by this Order. When the term "court" is used in the Pa.R.C.P., "Bureau" is to be understood;

when the terms “prothonotary” or “clerk of court” are used in the Pa.R.C.P., “Formal Docketing Unit” is to be understood.

(c) *Limitations.* In addition to the general limitation on the scope of discovery and deposition set forth in Pa.R.C.P. 4011 (relating to limitation of scope of discovery and deposition), the limitations on discovery in paragraphs (1)—(4) apply in provider appeals.

(1) *Interrogatories.* Interrogatories to a party, as a matter of right, shall not exceed ten in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence each shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. If counsel for a party believes that more than ten interrogatories are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to serve additional interrogatories if the party establishes to the Bureau’s satisfaction that additional interrogatories are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(2) *Requests for Admissions.* Request for admissions to a party, as a matter of right, shall not exceed ten in number. All requests for admissions, including subdivisions of one numbered request, shall be construed as a separate request. If counsel for a party believes that more than ten requests for admission are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests. Counsel are expected to comply with this requirement in good faith. In the event the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to serve additional requests for admission if the party establishes to the Bureau’s satisfaction that additional requests for admission are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(3) *Depositions by Oral or Written Examination.* Depositions, as a matter of right, shall not exceed three in number. A deposition of a person shall not be permitted if the person has already been deposed in the appeal. If counsel for a party believes that more than three depositions or that the deposition of a person who has already been deposed are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional depositions. Counsel are expected to comply with this requirement in good faith. In the event the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to take additional depositions if the party establishes to the Bureau’s satisfaction that additional depositions are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(4) *Deposition of the Secretary and Senior Department Officials.*

(i) Unless the Secretary has been identified as a witness by the program office, a party may not depose the Secretary.

(ii) Unless a senior department official has been identified as a witness by the program office or agrees to submit to a deposition, a party may not depose a senior department official regardless of the number of depositions taken, except that the Bureau, upon motion of a party, may permit the party to depose a senior department official if the party establishes to the Bureau’s satisfaction that the following apply:

(A) The senior department official was personally involved in the disputed agency action.

(B) The deposition of the senior department official is reasonable and necessary in light of the particular facts involved and will not prevent the prompt and efficient adjudication of the provider appeal.

(d) *Protective Orders.* The Bureau may issue protective orders limiting or precluding discovery in accordance with subsection (c) or as specified in Pa.R.C.P. 4012 (relating to protective orders).

(e) *Timing and Sequence of Discovery.* Unless the Bureau upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party’s discovery.

#### **Rule 37. Supplementing disclosures and responses.**

(a) *Disclosures.* A party has a duty to supplement or correct a disclosure under Rule 35 (relating to disclosures) to include information thereafter acquired if ordered by the Bureau or if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) *Responses to Discovery Requests.* A party is under a duty to supplement responses made to discovery requests as set forth in Pa.R.C.P. 4007.4 (relating to supplementing responses).

#### **Rule 38. Signing of disclosures, discovery requests, responses and objections.**

(a) Every disclosure shall be signed by at least one attorney of record in the attorney’s individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party’s address. The signature of the attorney or party constitutes a certification that to the best of the signer’s knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(b) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney’s individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the signer’s address.

(1) The signature of the attorney or party constitutes a certification that to the best of the signer’s knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(i) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;



(ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(2) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of this rule, the Bureau, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

### Motions

#### Rule 39. General.

(a) This Rule applies to all motions made in a provider appeal, except oral motions made during the course of a hearing.

(b) Motions and responses to motions shall be in writing, signed by a party or its attorney and shall be accompanied by a proposed order.

(c) Unless the time is extended by the Bureau, a response to a dispositive motion shall be filed within 30 days of service of the motion, and a response to any other motion shall be filed within 20 days of service of the motion.

(d) Except in the case of a dispositive motion, the Bureau will deem a party's failure to respond to a motion to be the party's lack of opposition to the motion.

(e) Except in the case of a dispositive motion, the moving party may not file a reply to a response to its motion, unless the Bureau orders otherwise.

(f) Action on motions.

(1) The Bureau will rule on dispositive motions within 60 days after the moving party's reply to the non-moving party's response, if a reply is filed. If the moving party does not file a reply, the Bureau will rule on a dispositive motion within 60 days after the date on which the non-moving party's response is due.

(2) The Bureau will rule on motions other than dispositive motions within 30 days after the date on which the non-moving party's response is due.

(3) Notwithstanding paragraphs (1) and (2) of subsection (f), the Bureau will rule on all outstanding pre-hearing motions no later than 20 days prior to the commencement of the hearing.

#### Rule 40. Procedural motions.

(a) This Rule applies to motions in a provider appeal that pertain to the procedural aspects of a case, including motions for continuance, for expedited consideration, for extensions of time in which to file documents and for stay of proceedings.

(b) Procedural motions shall contain a statement indicating the nonmoving party's position on the relief re-

quested or a statement that the moving party, after a reasonable effort, has been unable to determine the nonmoving party's position.

(c) If all parties consent to the relief requested, the request may be embodied in a letter, provided the letter indicates the consent of the other parties.

(d) Requests for extensions or continuances, whether in letter or motion form, shall be accompanied by a proposed order.

(e) Procedural motions and responses may not be accompanied by supporting memoranda of law unless otherwise ordered by the Bureau.

#### Rule 41. Discovery motions.

(a) This Rule applies to motions filed to resolve disputes arising from the conduct of discovery under Rule 36 (relating to methods to discover additional information).

(b) A motion to compel discovery shall contain as exhibits the discovery requests and answers giving rise to the dispute.

(c) A party may file a memorandum of law in support of its discovery motion or its response to a discovery motion. The supporting memorandum of law shall be filed at the same time the motion or response is filed.

#### Rule 42. Dispositive motions.

(a) This Rule applies to dispositive motions in a provider appeal.

(b) Motions for summary judgment or partial summary judgment and responses to such motions shall conform to Pa.R.C.P. 1035.1—1035.5 (relating to motion for summary judgment).

(c) Dispositive motions shall be accompanied by a supporting memorandum of law. The Bureau may deny a dispositive motion if a party fails to file a supporting memorandum of law.

(d) An affidavit or other document relied upon in support of a dispositive motion, response or reply, that is not already a part of the record, shall be attached to the motion, response or reply or it will not be considered by the Bureau in ruling thereon.

#### Rule 43. Miscellaneous motions.

(a) This Rule applies to a motion in a provider appeal not otherwise addressed in Rules 40—42 (relating to procedural motions, discovery motions and dispositive motions), including a motion in limine, a motion to strike and a motion for recusal.

(b) A memorandum of law in support of a miscellaneous motion or response to a miscellaneous motion shall be filed with the miscellaneous motion or response.

### Mediation

#### Rule 44. Voluntary mediation.

(a) Upon request by all the parties, the Bureau may stay a provider appeal commenced by a request for hearing for up to 120 days to allow the parties to utilize voluntary mediation services through the Office of General Counsel Mediation Program.

(b) The parties shall file their request for stay with the Bureau at least 14 days before initiation of hearings by the Bureau.

(c) At the end of the initial stay, the parties shall jointly file a statement which sets forth the status of

mediation activities conducted. The parties may request an additional stay if necessary to complete the mediation process.

(d) The grant of an additional stay for mediation is in the Bureau's discretion and the Bureau may impose limitations the Bureau deems appropriate.

(e) A party's participation in voluntary mediation may not be used as evidence in a proceeding before the Bureau. Communications between the parties during the mediation period shall be regarded as offers of settlement and are neither discoverable nor admissible as evidence in a proceeding before the Bureau.

### Hearings

#### Rule 45. Initiation of hearings.

(a) If, after the Bureau has ruled on any dispositive motions, a hearing is required to determine any remaining issues, the Bureau will, after consultation with the parties, schedule a formal evidentiary hearing and send a notice of hearing to all parties to the provider appeal.

(b) A hearing may, if permitted by the rules or by agreement of the parties, be conducted via telephone.

#### Rule 46. Continuance of hearings.

A hearing may not be continued except for compelling reasons. A motion for continuance of a hearing shall be submitted to the Bureau in writing with a copy served upon the other parties to the proceedings, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing.

#### Rule 47. Burden of proof and production.

(a) The provider has the burden of proof to establish its case by a preponderance of the evidence, and is required to make a prima facie case by the close of its case-in-chief. The provider has the burden of production, unless otherwise directed by the presiding officer, upon a determination included in the record by the presiding officer that the evidence is peculiarly within the knowledge or control of another party or participant, in which case the order of presentation may be varied by the presiding officer.

(b) Each party shall have the right to an opening statement, presentation of evidence, cross-examination, objection, motion and argument, and closing argument.

(c) A pleading shall, without further action, be considered part of the record. In no event, however, shall a pleading be considered as evidence of any fact other than that of the filing thereof, unless offered and received into evidence under these rules.

### Subchapter C. Evidence and Witnesses

#### General

#### Rule 48. Written testimony.

(a) Written testimony of a witness, including an expert witness, on numbered lines in question and answer form, may be admitted into evidence in a provider appeal provided the witness is present for cross-examination at the hearing or the parties agree that the witness' presence at the hearing is not required.

(b) Written testimony shall be filed concurrently with the proffering party's position paper unless a different time is prescribed by the Bureau. Objections to written testimony which can be reasonably anticipated prior to hearing shall be in writing and filed within the time prescribed for pre-hearing motions in limine, unless otherwise ordered by the Bureau.

(c) If a party desires to file written testimony prior to the close of the record, it may do so only upon motion approved by the Bureau for good cause. This approval shall include the scope of the written testimony and the time for filing the testimony and service upon opposing counsel.

### Subpoenas

#### Rule 49. Subpoenas.

(a) Except as otherwise provided in this chapter or by order of the Bureau, requests for subpoenas and subpoenas shall be governed by Pa.R.C.P. 234.1—234.4 (relating to subpoena to attend and testify, subpoena, issuance, service, compliance fees, prisoners, notice to attend, notice to produce, subpoena, notice to attend, notice to produce, relief from compliance, motion to quash) and 234.6—234.9 (relating to form of subpoena, form of notice to attend, form of notice to produce, notice and acknowledgment of receipt of subpoena by mail). When the term "court" is used in Pa.R.C.P. "Bureau" is to be understood; when the terms "Prothonotary" or "clerk of court" are used in Pa.R.C.P. "Formal Docketing Unit" is to be understood.

(b) Proof of service of the subpoena need not be filed with the Bureau.

### Subchapter E. Presiding Officers

#### Rule 50. Independence, Ex parte Communications.

(a) The presiding officers shall act independently of employees or public officials of the Department whose actions are subject to review before the Bureau.

(b) The presiding officers shall not engage in ex parte communications concerning a hearing with any party to the hearing.

### Subchapter F. Posthearing Procedures

#### Briefs

#### Rule 51. Post hearing briefs.

(a) The initial post hearing brief of each party shall be as concise as possible and may not exceed 50 pages. An initial post hearing brief shall contain proposed findings of fact, with references to the appropriate exhibit or page of the transcript, an argument with citation to supporting legal authority, and proposed conclusions of law.

(b) The provider shall file its initial post hearing brief first and within the time specified by the presiding officer, which shall not be less than 30 days from the closing of the record unless the provider consents to a shorter period of time. The program office shall file its initial post hearing brief within 30 days of the date of service of the provider's brief.

(c) The provider may file a reply brief within 20 days of service of the program office post hearing brief. A reply brief shall be as concise as possible and may not exceed 25 pages.

(d) Longer briefs and surreply briefs may be permitted at the discretion of the presiding officer.

(e) A party may waive the filing of a post-hearing brief.

(f) If a party files a post hearing brief, any disputed issue or any legal theory that is not argued in the party's post hearing brief shall be deemed waived.

### Subchapter G. Agency Action.

#### Decisions

#### Rule 52. Determinations and Recommendations by the Bureau.

(a) The Bureau will conduct a de novo review of all factual and legal issues that are timely raised and

properly preserved in a provider appeal. Except as provided in subsection (b), the Bureau will issue a determination adjudicating all contested issues of law and fact within its jurisdiction, and issue an appropriate order, decree or decision.

(b) In the event that a request for hearing includes a waiver request, the Bureau will make a written recommendation for consideration by the Secretary proposing that the waiver be either granted or denied and stating the Bureau's reasoning in support of its position. If the request for hearing raises factual and legal issues in addition to the waiver request, the Bureau will issue its written recommendation together with its final determination adjudicating the remaining factual and legal issues, as specified in subsection (c). If the request for hearing does not raise any other issues, the Bureau's written recommendation on the waiver request will be issued within the time limits and served on the parties as specified in subsection (c).

(c) The Bureau will issue a determination in a provider appeal within thirty days of the filing of all post hearing briefs, or, if the parties waive the filing of post hearing briefs, within thirty days of the close of the record or receipt of the transcript, whichever is later. The Bureau will serve a copy of its determination on all parties to the proceeding or their representatives.

(d) A party aggrieved by a determination of the Bureau may request the Secretary to review the determination pursuant to Rule 55 (relating to review of bureau determinations). For purposes of this rule, a program office shall be deemed to be aggrieved if the Bureau determination sustains the provider's appeal in whole or in part; if the Bureau determination interprets a statute, regulation or other statement of policy or bulletin applied by the program office in a manner inconsistent with the interpretation of that office; or if the Bureau determination alters a policy of that office or purports to impose a new or different rule or policy on that office.

(e) The Secretary will review written recommendations of the Bureau issued pursuant to subsections (b) or (c) pursuant to Rule 56 (review of bureau recommendations).

#### **Subchapter H. Reopening of Record**

##### **Rule 53. Reopening of record prior to adjudication.**

(a) After the conclusion of the hearing on the merits in a provider appeal and before the Bureau issues an adjudication, the Bureau, upon its own motion or upon a motion filed by a party, may reopen the record as provided in this section.

(b) The record may be reopened upon the basis of recently discovered evidence when all of the following circumstances are present:

(1) Evidence has been discovered which would conclusively establish a material fact of the case or would contradict a material fact which had been assumed or stipulated by the parties to be true.

(2) The evidence is discovered after the close of the record and could not have been discovered earlier with the exercise of due diligence.

(3) The evidence is not cumulative.

(c) The record may also be reopened to consider evidence that has become material as a result of a change in legal authority occurring after the close of the record. A motion to reopen the record on this basis shall specify the change in legal authority and demonstrate that it applies

to the matter pending before the Bureau. Such motion need not meet the requirements of paragraphs (2) and (3) of subsection (d).

(d) A motion seeking to reopen the record shall:

(1) Identify the evidence that the moving party seeks to add to the record.

(2) Describe the efforts that the moving party had made to discover the evidence prior to the close of the record.

(3) Explain how the evidence was discovered after the close of the record.

(e) A motion filed under subsection (b) shall be verified and all motions to reopen shall contain a certification by counsel that the motion is being filed in good faith and not for the purpose of delay. The motion shall be served upon all parties to the proceedings.

#### **Reconsideration and Review by the Secretary**

##### **Rule 54. Reconsideration of interlocutory orders.**

(a) A motion for reconsideration by the Secretary of an interlocutory order or ruling of the Bureau shall be filed within 10 days of the order or ruling. The petition must demonstrate that extraordinary circumstances justify immediate consideration of the matter by the Secretary. A party may file a memorandum of law at the time the motion or response is filed.

(b) A copy of the motion shall be served upon the parties. A party wishing to file an answer may do so within 10 days of service or as ordered by the Bureau or the Secretary.

(c) The failure of a party to file a motion under this section will not result in a waiver of any issue.

##### **Rule 55. Review of Bureau determinations.**

(a) A determination of the Bureau will be deemed the final adjudication of the Department effective upon expiration of the 30-day time period specified in subsection (b) unless an aggrieved party requests review by the Secretary within that 30-day time period.

(b) A request for review must be filed within 30 days of the mailing date of the Bureau determination. An untimely request for review shall be dismissed as of course unless the filing party can satisfy the requirements of Rule 20 (relating to appeals nunc pro tunc).

(c) A request for review shall be in writing and shall state concisely the alleged errors in the Bureau determination and shall identify the particular relief sought. If the party requesting review is seeking relief by reason of matters that have arisen since the hearing and Bureau determination, or by reason of a matter that would arise from compliance with the Bureau determination, the party shall specifically identify those matters in its request.

(d) If an aggrieved party timely requests review of a Bureau determination, the Secretary may enter an order granting or denying the request for review within 30 days of receipt of the request. No party has a right to have a Bureau determination reviewed by the Secretary, but only a right to request such review. The decision to grant or deny such a request lies within the discretion of the Secretary.

(e) If the Secretary enters an order denying a request for review within 30 days of receipt of the request, the Bureau's determination shall be deemed the final adjudication.

cation of the Department effective on the date of the order denying the request for review.

(f) If the Secretary fails to act on a request for review within thirty days of receipt of the request, the request for review shall be deemed denied, and the Bureau's determination shall be deemed the final adjudication of the Department effective on the date on which the request for review is deemed denied.

(g) No answers to a request for review will be considered by the Secretary unless the Secretary has granted review. If, and to the extent the Secretary has granted review, a response in the nature of an answer may be filed by any party, other than the party requesting review. The response shall be confined to the issues upon which the Secretary has granted review.

(h) If the Secretary grants review, the Secretary will enter a final order within 180 days of the date of the order granting review. The final order may affirm, reverse or modify the findings of fact, conclusions of law or the relief set forth in the Bureau's determination, and may, in order to promote fairness and the proper administration of the Medical Assistance Program, waive compliance with program requirements.

(i) If the Secretary fails to act within 180 days of the order granting review, the determination of the Bureau shall be deemed approved by, and the final order of, the Secretary effective the date it is deemed approved.

**Rule 56. Review of Bureau recommendations.**

(a) The Secretary will review and issue a final order adopting, rejecting or modifying a recommendation of the Bureau issued pursuant to Rule 52(b) (relating to determinations and recommendations by the bureau).

(b) Any party to the provider appeal in which the Bureau's recommendation was issued may file a brief with the Secretary setting forth its position regarding the recommendation at the same time the party requests review of the Bureau's related determination under Rule 55 (relating to review of bureau determinations) or, if the

party is not seeking review of the Bureau's determination, within 30 days of the date of the mailing date of the Bureau recommendation.

(c) A brief supporting or opposing the Bureau's recommendation shall state concisely the reasons for the party's position on the recommendation, shall set forth any proposed findings of fact and conclusions of law for consideration by the Secretary and shall specify what relief, if any, should be granted or denied by the Secretary. The brief shall not exceed 25 pages.

(d) The Secretary's final order regarding a recommendation issued pursuant to Rule 52(b) (relating to determinations and recommendations by the bureau) will be issued no later than:

(1) The date on which the Secretary issues a final order if review is granted under Rule 55 (relating to review of bureau determinations); or

(2) 180 days from the date of receipt of the written recommendation, if review is not granted under Rule 55 (relating to review of bureau determinations).

(e) If the Secretary does not issue a final order regarding a recommendation issued pursuant to Rule 52(b) (relating to determinations and recommendations by the bureau) within the time frames specified in subsection (d), the recommendation of the Bureau shall be deemed adopted by, and the final order of, the Secretary effective the date it is deemed adopted.

**Rule 57. Appeals.**

A provider aggrieved by a final adjudication of the Department issued pursuant to Rule 55 (a), (e) or (f) (relating to review of bureau determinations), or a final order of the Secretary issued pursuant to Rule 55 (e), (h) or (i) (relating to review of bureau determinations) or Rule 56(a) or (d) (relating to review of bureau recommendations) may petition for judicial review in accordance with 2 Pa.C.S. Ch.7 subch.11 (relating to judicial review of commonwealth agency action).

**Appendix A  
Title of GRAPP Section**

**GRAPP Section**

**Chapter 31**

31.1 Scope of part

31.2 Liberal construction

31.3 Definitions

31.4 Information and special instructions

31.5 Communications and filing generally

31.6 Amendments to rules

31.11 Timely filing required

31.12 Computation of time

31.13 Issuance of agency orders

**Status of GRAPP Section**

This section of the GRAPP is superseded.

This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 1 and 2.

This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 3.

This section of the GRAPP remains applicable to provider appeals.

This section of the GRAPP remains applicable only to the extent it is not inconsistent with a rule, including but not limited to Rules 8—29 and Rules 33—43.

This section of the GRAPP is superseded.

This section of the GRAPP is superseded.

This section of the GRAPP remains applicable to provider appeals.

This section of the GRAPP remains applicable to provider appeals.

31.14 Effective dates of agency orders	Subsection (a) of this section is superseded; subsection (b) of this section remains applicable to provider appeals.
31.15 Extensions of time	This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 7.
31.21 Appearance in person	This section of the GRAPP remains applicable to provider appeals.
31.22 Appearance by attorney	This section of the GRAPP remains applicable to provider appeals.
31.23 Other representation prohibited at hearings	This section of the GRAPP remains applicable to provider appeals.
31.24 Notice of appearance	This section of the GRAPP remains applicable to provider appeals.
31.25 Form of notice of appearance	This section of the GRAPP remains applicable to provider appeals.
31.26 Service on attorneys	This section of the GRAPP remains applicable to provider appeals.
31.27 Contemptuous conduct	This section of the GRAPP remains applicable to provider appeals.
31.28 Suspension and disbarment	This section of the GRAPP remains applicable to provider appeals.

**Chapter 33**

33.1 Title	This section of the GRAPP is superseded.
33.2 Form	This section of the GRAPP is superseded.
33.3 Incorporation by reference	This section of the GRAPP is superseded.
33.4 Single pleading or submittal covering more than one matter	This section of the GRAPP remains applicable to provider appeals.
33.11 Execution	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 9, 14 and 38.
33.12 Verification	This section of the GRAPP is superseded.
33.15 Number of copies	This section of the GRAPP is superseded.
33.21 Filing fees	This section of the GRAPP is superseded.
33.22 Mode of payment of fees	This section of the GRAPP is superseded.
33.23 Copy fees	This section of the GRAPP remains applicable to provider appeals.
33.31 Service by the agency	This section of the GRAPP is superseded.
33.32 Service by a participant	This section of the GRAPP is superseded.
33.33 Effect of service upon an attorney	This section of the GRAPP remains applicable to provider appeals.
33.34 Date of service	This section of the GRAPP remains applicable to provider appeals but is supplemented by Rule 14.
33.35 Proof of service	This section of the GRAPP is superseded.
33.36 Form of certificate of service	This section of the GRAPP is superseded.
33.37 Number of copies	This section of the GRAPP is superseded.
33.41 Amendments	This section of the GRAPP is superseded.
33.42 Withdrawal or terminations	This section of the GRAPP is superseded.
33.51 Docket	This section of the GRAPP is superseded.
33.61 Application for waiver of formal requirements	This section of the GRAPP remains applicable to provider appeals.

**Chapter 35****35-A PLEADINGS AND OTHER PRELIMINARY MATTERS**

35.1 Applications generally	This section of the GRAPP is superseded.
35.2 Contents of applications	This section of the GRAPP is superseded.
35.5 Form and content of informal complaints	This section of the GRAPP is superseded.
35.6 Correspondence handling of informal complaints	This section of the GRAPP is superseded.

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| 35.7 Discontinuance of informal complaints without prejudice             | This section of the GRAPP is superseded.   |
| 35.9 Formal complaints generally   | This section of the GRAPP is superseded.   |
| 35.10 Form and content of formal complaints                              | This section of the GRAPP is superseded.   |
| 35.11 Joinder of formal complaints                                       | This section of the GRAPP is superseded.   |
| 35.14 Order to show cause  | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.17 Petitions generally  | To the extent that an appealable agency action is involved, this section of the GRAPP is superseded. |
| 35.18 Petitions for issuance, amendment, waiver or repeal of regulations | To the extent that an appealable agency action is involved, this section of the GRAPP is superseded. |
| 35.19 Petitions for declaratory orders                                   | To the extent that an appealable agency action is involved, this section of the GRAPP is superseded. |
| 35.20 Appeals from actions of the staff                                  | This section of the GRAPP is superseded.   |
| 35.23 Protest generally  | This section of the GRAPP is superseded.   |
| 35.24 Effect of protest  | This section of the GRAPP is superseded.   |
| 35.27 Initiation of intervention   | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.28 Eligibility to intervene   | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.29 Form and content of petitions to intervene                         | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.30 Filing of petitions to intervene                                   | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.31 Notice and action on petitions to intervene                        | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.32 Limitation of participation in hearings                            | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.35 Answers to complaints and petitions                                | This section of the GRAPP is superseded.   |
| 35.36 Answers to petitions to intervene                                  | This section of the GRAPP is superseded.   |
| 35.37 Answers to orders to show cause                                    | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.38 Respondents seeking affirmative relief                             | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.39 Replies to respondents seeking affirmative relief                  | This section of the GRAPP is superseded.   |
| 35.40 Answers to amendments of pleadings                                 | This section of the GRAPP is superseded.   |
| 35.41 Satisfaction of complaints   | This section of the GRAPP is superseded.   |
| 35.45 Consolidation  | This section of the GRAPP is superseded.   |
| 35.48 Amendments of pleadings generally                                  | This section of the GRAPP is superseded.   |
| 35.49 Amendments to conform to the evidence                              | This section of the GRAPP is superseded.   |
| 35.50 Directed amendments  | This section of the GRAPP is superseded.   |
| 35.51 Withdrawal of pleadings  | This section of the GRAPP is superseded.   |
| 35.54 Motions as to complaint  | This section of the GRAPP is superseded.   |
| 35.55 Motions as to answer   | This section of the GRAPP is superseded.   |
| <b>35-B HEARINGS AND CONFERENCES</b>                                     |  |
| 35.101 Waiver of hearing   | This section of the GRAPP is superseded.   |
| 35.102 Hearing calendar  | This section of the GRAPP remains applicable to provider appeals.                                    |
| 35.103 Preliminary notice to Department of Justice                       | This section of the GRAPP is superseded.   |
| 35.104 Notice of rulemaking proceedings                                  | This section of the GRAPP is superseded.   |
| 35.105 Notice of nonrulemaking proceedings                               | This section of the GRAPP is superseded.   |
| 35.106 Contents of notice of nonrulemaking proceedings                   | This section of the GRAPP is superseded.   |

- 35.111 Conferences to adjust, settle or expedite proceedings This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33, 34, and 44.
- 35.112 Conferences to expedite hearings This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
- 35.113 Initiation of conferences This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
- 35.114 Authority of presiding officer at conference This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
- 35.115 Offers of settlement This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33, 34, and 44.
- 35.116 Refusal to make admissions or stipulate This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
- 35.121 Initiation of hearings This section of the GRAPP is superseded.
- 35.122 Consolidation of formal hearings This section of the GRAPP is superseded.
- 35.123 Conduct of hearings This section of the GRAPP remains applicable to provider appeals.
- 35.124 Appearances This section of the GRAPP remains applicable to provider appeals.
- 35.125 Order of procedure This section of the GRAPP is superseded.
- 35.126 Presentation by the parties This section of the GRAPP is superseded.
- 35.127 Limiting number of witnesses This section of the GRAPP remains applicable to provider appeals.
- 35.128 Additional evidence This section of the GRAPP remains applicable to provider appeals.
- 35.131 Recording of proceedings This section of the GRAPP remains applicable to provider appeals.
- 35.132 Transcript corrections This section of the GRAPP remains applicable to provider appeals.
- 35.133 Copies of transcripts This section of the GRAPP remains applicable to provider appeals.
- 35-C EVIDENCE AND WITNESSES**
- 35.137 Oral examination This section of the GRAPP remains applicable to provider appeals.
- 35.138 Expert witnesses This section of the GRAPP is superseded.
- 35.139 Fees of witnesses This section of the GRAPP is superseded.
- 35.142 Subpoenas This section of the GRAPP is superseded.
- 35.145 Depositions This section is inapplicable to discovery but is otherwise applicable to provider appeals.
- 35.146 Notice and application This section is inapplicable to discovery but is otherwise applicable to provider appeals.
- 35.147 Authorization of taking deposition This section is inapplicable to discovery but is otherwise applicable to provider appeals.
- 35.148 Officer before whom deposition is taken This section is inapplicable to discovery but is otherwise applicable to provider appeals.
- 35.149 Oath and reduction to writing This section is inapplicable to discovery but is otherwise applicable to provider appeals.
- 35.150 Scope and conduct of examination This section is inapplicable to discovery but is otherwise applicable to provider appeals.
- 35.151 Status of deposition as part of record This section is inapplicable to discovery but is otherwise applicable to provider appeals.
- 35.152 Fees of officers and deponents This section is inapplicable to discovery but is otherwise applicable to provider appeals.
- 35.155 Presentation and effect of stipulations This section of the GRAPP remains applicable to provider appeals.
- 35.161 Form and admissibility of evidence This section of the GRAPP remains applicable to provider appeals.

- 35.162 Reception and ruling on evidence This section of the GRAPP remains applicable to provider appeals.
- 35.163 Designation of relevant portions of documentary evidence This section of the GRAPP remains applicable to provider appeals.
- 35.164 Documents on file with agency This section of the GRAPP remains applicable to provider appeals.
- 35.165 Public documents This section of the GRAPP remains applicable to provider appeals.
- 35.166 Prepared expert testimony This section of the GRAPP remains applicable to provider appeals.
- 35.167 Records in other proceedings This section of the GRAPP remains applicable to provider appeals.
- 35.168 Form and size of documentary evidence This section of the GRAPP remains applicable to provider appeals.
- 35.169 Copies to parties and agency This section of the GRAPP remains applicable to provider appeals.
- 35.173 Official notice of facts This section of the GRAPP remains applicable to provider appeals.
- 35-D MOTIONS**
- 35.177 Scope and contents of motions This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 38, 39, 40, and 41.
- 35.178 Presentation of motions This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 38.
- 35.179 Objections to motions This section of the GRAPP is superseded.
- 35.180 Action on motions This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 39—43.
- 35-E PRESIDING OFFICERS**
- 35.185 Designation of presiding officers This section of the GRAPP remains applicable to provider appeals.
- 35.186 Disqualification of a presiding officer This section of the GRAPP remains applicable to provider appeals.
- 35.187 Authority delegated to presiding officers This section of the GRAPP remains applicable to provider appeals.
- 35.188 Restrictions on duties and activities This section of the GRAPP remains applicable to provider appeals.
- 35.189 Manner of conduct of hearings This section of the GRAPP remains applicable to provider appeals.
- 35.190 Appeals to agency head from rulings of presiding officers This section of the GRAPP remains applicable to provider appeals.
- 35-F BRIEFS**
- 35.191 Proceedings in which briefs are to be filed This section of the GRAPP is superseded.
- 35.192 Content and form of briefs This section of the GRAPP is superseded.
- 35.193 Filing and service of briefs This section of the GRAPP is superseded.
- 35.-G PROPOSED REPORTS**
- 35.201 Certification of record without proposed report This section of the GRAPP is superseded.
- 35.202 Proceedings in which proposed reports are prepared This section of the GRAPP is superseded.
- 35.203 Unavailability of presiding officer This section of the GRAPP is superseded.
- 35.204 Oral argument before presiding officer This section of the GRAPP is superseded.
- 35.205 Contents of proposed reports This section of the GRAPP is superseded.
- 35.206 Proposed report a part of the record This section of the GRAPP is superseded.
- 35.207 Service of proposed reports This section of the GRAPP is superseded.
- 35.211 Procedure to except to proposed report This section of the GRAPP is superseded.
- 35.212 Content and form of briefs on exceptions This section of the GRAPP is superseded.
- 35.213 Effect of failure to except to proposed report This section of the GRAPP is superseded.
- 35.214 Oral argument on exceptions This section of the GRAPP is superseded.



**35-H BRIEFS AND ARGUMENT IN ABSENCE OF PROPOSED REPORT**

- 35.221 Briefs and oral argument in absence of proposed report This section of the GRAPP is superseded.
- 35.225 Interlocutory orders This section of the GRAPP remains applicable to provider appeals.
- 35.226 Final orders This section of the GRAPP remains applicable to provider appeals.
- 35-I REOPENING AND REHEARING**
- 35.231 Reopening on application of party This section of the GRAPP is superseded.
- 35.232 Reopening by presiding officer This section of the GRAPP is superseded.
- 35.233 Reopening by agency action This section of the GRAPP remains applicable to provider appeals.
- 35.241 Application for rehearing or reconsideration This section of the GRAPP is superseded.

[Pa.B. Doc. No. 03-1269. Filed for public inspection June 27, 2003, 9:00 a.m.]

**Inpatient Hospital Services**

The purpose of this announcement is to provide prior public notice of the Department of Public Welfare's (Department) intent to revise its payment methods for inpatient hospital services. Effective July 1, 2003, the Department proposes to discontinue its additional class of disproportionate share (DSH) payments to hospitals that have advanced the Department's goal of enhanced access to multiple types of medical care in economically distressed areas of this Commonwealth. This change will affect inpatient acute care general hospitals.

This additional class of disproportionate payment is separate from and in addition to the payments made to hospitals for inpatient hospital services provided to Medical Assistance recipients and are not otherwise required to be made under State or Federal law. The proposed elimination of these discretionary payments is attributable to the lack of available funds in the General Appropriations Act of 2004 as passed by the General Assembly in March 2003. The Department, at the direction of Governor Rendell, and unlike many states which have proposed to address budget deficits and revenue shortfalls by essentially eliminating basic healthcare coverage for many of their poorest citizens, did not abandon this Commonwealth's most vulnerable citizens in developing the Department's Fiscal Year (FY) 2004 budget. Consequently, given the Governor's directive and the obligation to achieve a balanced budget, the Department proposes to eliminate this discretionary class of DSH payments.

*Fiscal Impact*

It is anticipated that this revision will result in a savings of \$12.936 million in total funds (\$7.074 in Federal funds, \$5.862 in State funds) for FY 2003-04.

*Public Comment*

Interested persons are invited to submit written comments about the proposed elimination of payments to the Department within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Comments should be sent 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.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-NOT-366. No fiscal impact; (8) recommends adoption. This revision will result in savings in Fiscal Year 2003-2004 of \$5,862,000 to the Medical Assistance—Inpatient appropriation.

[Pa.B. Doc. No. 03-1270. Filed for public inspection June 27, 2003, 9:00 a.m.]

**Payment for Nursing Facility Services; Nursing Facility Supplementation Payment**

The purpose of this announcement is to provide advance notice that the Department of Public Welfare (Department) intends to make changes in its methods and standards for payment of Medical Assistance (MA) nursing facility services beginning in fiscal year (FY) 2003-2004.

The Commonwealth budget for MA long-term care services for FY 2003-2004 assumes that \$320 million will be derived from State revenue collected from an assessment on nursing facilities and related Federal matching funds. Legislation must be enacted to impose the assessment and collect the anticipated State revenues. If assessment legislation is enacted, the revenue generated from the assessment will enable the Department to continue to set payment rates for MA nursing facility services under the existing case-mix payment methodology and to make supplementation payments to private MA nursing facility providers. Taking into account the additional supplementation payments, the Department projects that the assessment revenues and associated Federal matching funds will increase overall payments to MA nursing facility providers in FY 2003-2004.

To authorize the additional supplementation payments, the Department will submit a State Plan Amendment to the Federal Centers for Medicare and Medicaid Services (CMS) that proposes changes in the methods and standards for setting nursing facility payment rates. If CMS approves the State Plan amendment, the Department will

make the supplementation payments to MA nursing facilities, other than county nursing facilities, in periodic lump sum payments. The supplementation payments will be calculated on a per diem basis that varies depending on the MA occupancy of the facilities. The supplementation payments will enable the facilities to increase salaries to direct care staff to maintain or increase staffing levels at a time when it is difficult to attract and keep qualified staff. Regardless of whether an MA resident currently occupies a Medicaid-certified bed, the Department recognizes the facility's need to staff and maintain the bed in readiness for an MA resident. The supplementation payments also will provide the facilities with additional funds to meet other unanticipated costs that may not be reflected in the current database used to establish rates, such as increased liability insurance costs and the assessment costs. Finally, the supplementation payments will help to offset decreased revenues that may have resulted from declines in the facilities' investment income.

#### *Fiscal Impact*

As a result of this proposed policy change, the Department estimates that annual aggregate expenditures for MA nursing facility services for FY 2003-2004 will increase by \$275.646 million (\$116.571 million in State funds).

#### *Public Comment*

Interested persons are invited to submit written comments about the changes to the case-mix payment system to the Department within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Comments should be addressed to the Department of Public Welfare, Division of Long Term Care Client Services, Attention Gail Weidman, P. O. Box 2675, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-NOT-368. (1) General Fund; (2) Implementing Year 2003-04 is \$116,571,000; (3) 1st Succeeding Year 2004-05 is \$116,571,000; 2nd Succeeding Year 2005-06 is \$116,571,000; 3rd Succeeding Year 2006-07 is \$116,571,000; 4th Succeeding Year 2007-08 is \$116,571,000; 5th Succeeding Year 2008-09 is \$116,571,000; (4) 2001-02 Program—\$761,877,000; 2000-01 Program—\$722,565,000; 1999-00—\$693,625,000; (7) Medical Assistance—Long Term Care; (8) recommends adoption. Funding for this change will be derived from revenue collected from an assessment on nursing home facilities authorized by recently enacted State legislation.

[Pa.B. Doc. No. 03-1271. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Payments to Inpatient Hospitals

The purpose of this announcement is to provide advance public notice of the Department of Public Welfare's (Department) intent to revise its payment methods for inpatient hospital services. Effective July 1, 2003, the Department proposes to discontinue Direct Medical Education, Community Access Fund and Outpatient Disproportionate Share payments to hospitals. This change in policy would affect inpatient acute care general hospitals, private psychiatric hospitals, psychiatric units of acute

care general hospitals, rehabilitation hospitals and rehabilitation units of acute care general hospitals.

These payments are separate from and in addition to the payments made to hospitals for inpatient hospital services provided to Medical Assistance recipients and are not otherwise required to be made under State or Federal law. The proposed elimination of these discretionary payments is attributable to the lack of available funds in the General Appropriations Act of 2004 as passed by the General Assembly in March 2003. The Department, at the direction of Governor Rendell, and unlike many states which have proposed to address budget deficits and revenue shortfalls by essentially eliminating basic healthcare coverage for many of their poorest citizens, did not abandon this Commonwealth's most vulnerable citizens in developing the Department's Fiscal Year (FY) 2004 budget. Consequently, given the Governor's directive and the obligation to achieve a balanced budget, the Department proposes to eliminate these discretionary payments.

#### *Fiscal Impact*

It is anticipated that this revision will result in a savings of \$195.654 million in total funds (\$104.263 million in Federal funds, \$91.391 million in State funds) for FY 2003-04.

#### *Public Comment*

Interested persons are invited to submit written comments about the proposed elimination of payments to the Department within 30 days of publication of this notice in the *Pennsylvania Bulletin*. Comments should be sent 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.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-NOT-362. No fiscal impact; (8) recommends adoption. This revision will result in savings in Fiscal Year 2003-2004 of \$63.5 million to the Medical Assistance—Inpatient appropriation and \$28.1 million to the Medical Assistance—Outpatient appropriation.

[Pa.B. Doc. No. 03-1272. Filed for public inspection June 27, 2003, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Crown Jewels Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Crown Jewels.
2. *Price:* The price of a Pennsylvania Crown Jewels instant lottery game ticket is \$5.

3. *Play Symbols:* Each Pennsylvania Crown Jewels instant lottery game ticket will contain one play area featuring a "Winning Numbers" area and a "Your Numbers" area. The play symbols and their captions located in the "Winning Numbers" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THR TN), 14 (FORTN), 15 (FIFTN), 16 (SIX TN), 17 (SVN TN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR) and 24 (TWYFOR). The play symbols and their captions located in the "Your Numbers" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THR TN), 14 (FORTN), 15 (FIFTN), 16 (SIX TN), 17 (SVN TN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR) and a Chest Symbol (CHEST).

4. *Prize Play Symbols:* The prize play symbols and their captions located in the "Your Numbers" area are: \$2<sup>00</sup>, \$5<sup>00</sup> (FIV DOL), \$6<sup>00</sup> (SIX DOL), \$8<sup>00</sup> (EGT DOL), \$10<sup>00</sup> (TEN DOL), \$12\$ (TWELV), \$15\$ (FIFTN), \$25\$ (TWY FIV), \$50\$ (FIFTY), \$75\$ (SVY FIV), \$150 (ONEHUNFTY), \$300 (THR HUN) and \$50,000 (FTY THO).

5. *Prizes:* The prizes that can be won in this game are \$2, \$5, \$6, \$8, \$10, \$12, \$15, \$25, \$50, \$75, \$150, \$300 and \$50,000. A player can win up to ten times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 3,360,000 tickets will be printed for the Pennsylvania Crown Jewels instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$50,000 (FTY THO) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$50,000.

(b) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$50,000 (FTY THO) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$50,000.

(c) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$300 (THR HUN) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$300.

(d) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$300 (THR HUN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$300.

(e) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$150 (ONEHUNFTY) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$150.

(f) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$150 (ONEHUNFTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$150.

(g) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$75\$ (SVY FIV) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$75.

(h) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$75\$ (SVY FIV) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$75.

(i) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$50\$ (FIFTY) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$50.

(j) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$50\$ (FIFTY) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$50.

(k) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$25\$ (TWY FIV) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$25.

(l) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$25\$ (TWY FIV) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$25.

(m) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$15\$ (FIFTN) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$15.

(n) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$15\$ (FIFTN) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$15.

(o) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$12\$ (TWELV) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$12.

(p) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$12\$ (TWELV) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$12.

(q) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$10<sup>00</sup> (TEN DOL) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$10.

(r) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$10<sup>00</sup> (TEN DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(s) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$8<sup>.00</sup> (EGT DOL) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$8.

(t) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$8<sup>.00</sup> (EGT DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$8.

(u) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$6<sup>.00</sup> (SIX DOL) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$6.

(v) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$6<sup>.00</sup> (SIX DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$6.

(w) Holders of tickets upon which any one of the "Your Numbers" play symbols is a Chest Symbol (CHEST), and a prize play symbol of \$5<sup>.00</sup> (FIV DOL) appears under the Chest Symbol (CHEST) on a single ticket, shall be entitled to a prize of \$5.

(x) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$5<sup>.00</sup> (FIV DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$5.

(y) Holders of tickets upon which any one of the "Your Numbers" play symbols matches any of the "Winning Numbers" play symbols and a prize play symbol of \$2<sup>.00</sup> (TWO DOL) appears under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$2.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

<i>When Any of Your Numbers Match Any of the Winning Numbers, Win With Prize(s) of:</i>	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 3,360,000 Tickets</i>
\$5	\$5	1:28.57	117,600
\$5 w/Chest	\$5	1:9.23	364,000
\$6	\$6	1:120	28,000
\$6 w/Chest	\$6	1:85.71	39,200
\$8	\$8	1:300	11,200
\$8 w/Chest	\$8	1:300	11,200
\$2 x 5	\$10	1:120	28,000
\$5 x 2	\$10	1:600	5,600
\$10	\$10	1:600	5,600
\$10 w/Chest	\$10	1:120	28,000
\$6 x 2	\$12	1:300	11,200
\$12	\$12	1:600	5,600
\$12 w/Chest	\$12	1:120	28,000
\$5 x 3	\$15	1:600	5,600
\$10 + \$5	\$15	1:300	11,200
\$15	\$15	1:600	5,600
\$15 w/Chest	\$15	1:150	22,400
\$5 x 5	\$25	1:75	44,800
\$25	\$25	1:200	16,800
\$25 w/Chest	\$25	1:66.67	50,400
\$25 x 2	\$50	1:363.64	9,240
\$15 x 3 + \$5	\$50	1:363.64	9,240
\$5 x 10	\$50	1:363.64	9,240
\$10 x 5	\$50	1:363.64	9,240
\$50	\$50	1:352.94	9,520
\$50 w/Chest	\$50	1:352.94	9,520
\$15 x 5	\$75	1:4,800	700
\$25 x 3	\$75	1:4,800	700
\$75	\$75	1:4,615	728
\$75 w/Chest	\$75	1:4,615	728
\$15 x 10	\$150	1:120,000	28
\$75 x 2	\$150	1:120,000	28
\$150	\$150	1:120,000	28
\$150 w/Chest	\$150	1:120,000	28
\$75 x 4	\$300	1:240,000	14
\$150 x 2	\$300	1:240,000	14
\$300	\$300	1:240,000	14
\$300 w/Chest	\$300	1:240,000	14

*When Any of Your Numbers Match Any of the Winning Numbers, Win With Prize(s) of:*

	<i>Win</i>
\$50,000	\$50,000
\$50,000 w/Chest	\$50,000

Chest = Automatically win prize shown

<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 3,360,000 Tickets</i>
1:1,680,000	2
1:1,680,000	2

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Crown Jewels instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Crown Jewels, prize money from winning Pennsylvania Crown Jewels instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Crown Jewels instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Crown Jewels or through normal communications methods.

GREGORY C. FAJT,  
*Secretary*

[Pa.B. Doc. No. 03-1273. Filed for public inspection June 27, 2003, 9:00 a.m.]

**Pennsylvania Magic 8 Ball Instant Lottery Game**

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Magic 8 Ball.

2. *Price:* The price of a Pennsylvania Magic 8 Ball instant lottery game ticket is \$2.00.

3. *Play Symbols:* Each Pennsylvania Magic 8 Ball instant lottery game ticket will contain one play area featuring one “Winning Numbers” area, one “Your Numbers” area and a “Magic Bonus Box” area. The play symbols and their captions located in the “Winning Numbers” area and “Your Numbers” area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN) and 16 (SIXTN). The play symbols their captions located in the “Magic Bonus Box” area are: YES (AFFRM) and TRY (AGAIN).

4. *Prize Play Symbols:* The prize play symbols and their captions located in the 8 “Prize” areas are: \$1<sup>00</sup> (ONE DOL), \$2<sup>00</sup> (TWO DOL), \$3<sup>00</sup> (THR DOL), \$4<sup>00</sup> (FOR DOL), \$6<sup>00</sup> (SIX DOL), \$8<sup>00</sup> (EGT DOL), \$10<sup>00</sup> (TEN DOL), \$12\$ (TWELV), \$18\$ (EGHTN), \$24\$ (TWY FOR), \$32\$ (TRY TWO), \$48\$ (FRY EGT), \$80\$ (EIGHTY), \$400 (FOR HUN) and \$8,888 (ETHEHEYET).

5. *Prizes:* The prizes that can be won in this game are \$1, \$2, \$3, \$4, \$6, \$8, \$10, \$12, \$18, \$24, \$32, \$48, \$80, \$400 and \$8,888. The player can win up to eight times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 4,080,000 tickets will be printed for the Pennsylvania Magic 8 Ball instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the “Your Numbers” play symbols matches either of the “Winning Numbers” play symbols and a prize play symbol of \$8,888 (ETHEHEYET) appears in the “Prize” area under the matching “Your Numbers” play symbol, on a single ticket, shall be entitled to a prize of \$8,888.

(b) Holders of tickets upon which any one of the “Your Numbers” play symbols matches either of the “Winning Numbers” play symbols and a prize play symbol of \$400 (FOR HUN) appears in the “Prize” area under the matching “Your Numbers” play symbol, on a single ticket, shall be entitled to a prize of \$400.

(c) Holders of tickets upon which any one of the “Your Numbers” play symbols matches either of the “Winning Numbers” play symbols and a prize play symbol of \$80\$ (EIGHTY) appears in the “Prize” area under the matching “Your Numbers” play symbol, on a single ticket, shall be entitled to a prize of \$80.

(d) Holders of tickets with a YES (AFFRM) in the “Magic Bonus Box” area and eight prize play symbols of \$10<sup>00</sup> (TEN DOL) in the eight “Prize” areas, on a single ticket, shall be entitled to a prize of \$80.

(e) Holders of tickets upon which any one of the “Your Numbers” play symbols matches either of the “Winning Numbers” play symbols and a prize play symbol of \$48\$ (FRY EGT) appears in the “Prize” area under the matching “Your Numbers” play symbol, on a single ticket, shall be entitled to a prize of \$48.

(f) Holders of tickets with a YES (AFFRM) in the “Magic Bonus Box” area and eight prize play symbols of \$6<sup>00</sup> (SIX DOL) in the eight “Prize” areas, on a single ticket, shall be entitled to a prize of \$48.

(g) Holders of tickets upon which any one of the “Your Numbers” play symbols matches either of the “Winning Numbers” play symbols and a prize play symbol of \$32\$ (TRY TWO) appears in the “Prize” area under the matching “Your Numbers” play symbol, on a single ticket, shall be entitled to a prize of \$32.

(h) Holders of tickets with a YES (AFFRM) in the “Magic Bonus Box” area and eight prize play symbols of

\$4<sup>00</sup> (FOR DOL) in the eight "Prize" areas, on a single ticket, shall be entitled to a prize of \$32.

(i) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning Numbers" play symbols and a prize play symbol of \$24\$ (TWY FOR) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$24.

(j) Holders of tickets with a YES (AFFRM) in the "Magic Bonus Box" area and eight prize play symbols of \$3<sup>00</sup> (THR DOL) in the eight "Prize" areas, on a single ticket, shall be entitled to a prize of \$24.

(k) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning Numbers" play symbols and a prize play symbol of \$18\$ (EGHTN) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$18.

(l) Holders of tickets with a YES (AFFRM) in the "Magic Bonus Box" area, six prize play symbols of \$2<sup>00</sup> (TWO DOL) and two prize play symbols of \$3<sup>00</sup> (THR DOL) in the eight "Prize" areas, on a single ticket, shall be entitled to a prize of \$18.

(m) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning Numbers" play symbols and a prize play symbol of \$12\$ (TWELV) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$12.

(n) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning Numbers" play symbols and a prize play symbol of \$10<sup>00</sup> (TEN DOL) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(o) Holders of tickets with a YES (AFFRM) in the "Magic Bonus Box" area, six prize play symbols of \$1<sup>00</sup> (ONE DOL) and two prize play symbols of \$2<sup>00</sup> (TWO DOL) in the eight "Prize" areas, on a single ticket, shall be entitled to a prize of \$10.

(p) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning

Numbers" play symbols and a prize play symbol of \$8<sup>00</sup> (EGT DOL) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$8.

(q) Holders of tickets with a YES (AFFRM) in the "Magic Bonus Box" area and eight prize play symbols of \$1<sup>00</sup> (ONE DOL) in the eight "Prize" areas, on a single ticket, shall be entitled to a prize of \$8.

(r) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning Numbers" play symbols and a prize play symbol of \$6<sup>00</sup> (SIX DOL) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$6.

(s) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning Numbers" play symbols and a prize play symbol of \$4<sup>00</sup> (FOR DOL) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$4.

(t) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning Numbers" play symbols and a prize play symbol of \$3<sup>00</sup> (THR DOL) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$3.

(u) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning Numbers" play symbols and a prize play symbol of \$2<sup>00</sup> (TWO DOL) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$2.

(v) Holders of tickets upon which any one of the "Your Numbers" play symbols matches either of the "Winning Numbers" play symbols and a prize play symbol of \$1<sup>00</sup> (ONE DOL) appears in the "Prize" area under the matching "Your Numbers" play symbol, on a single ticket, shall be entitled to a prize of \$1.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

<i>When Any of Your Numbers Match Either Winning Number Win With Prize(s) of:</i>	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 4,080,000 Tickets</i>
\$1 × 2	\$2	1:9.68	421,600
\$2	\$2	1:15	272,000
\$2 + \$1	\$3	1:150	27,200
\$1 × 3	\$3	1:150	27,200
\$3	\$3	1:150	27,200
\$1 × 4	\$4	1:1,500	2,720
\$2 × 2	\$4	1:750	5,440
\$1 + \$3	\$4	1:93.75	43,520
\$4	\$4	1:1,500	2,720
\$1 × 6	\$6	1:750	5,440
\$2 × 3	\$6	1:1,500	2,720
\$3 × 2	\$6	1:1,500	2,720
\$6	\$6	1:1,500	2,720
\$2 × 4	\$8	1:1,500	2,720
\$4 × 2	\$8	1:500	8,160
\$1 × 8	\$8	1:150	27,200
\$1 × 8 (YES)	\$8	1:45.45	89,760
\$8	\$8	1:500	8,160
\$2 × 5	\$10	1:1,500	2,720

When Any of Your Numbers  
Match Either Winning  
Number Win With Prize(s) of:

	Win	Approximate Odds	Approximate No. of Winners Per 4,080,000 Tickets
\$3 × 3 + \$1	\$10	1:1,500	2,720
\$1 × 6 + \$2 × 2 (YES)	\$10	1:750	5,440
\$10	\$10	1:1,500	2,720
\$12 + \$3 × 2	\$18	1:1,500	2,720
\$3 × 6	\$18	1:1,500	2,720
\$6 × 2 + \$3 × 2	\$18	1:1,500	2,720
\$2 × 6 + \$3 × 2 (YES)	\$18	1:62.50	65,280
\$18	\$18	1:500	8,160
\$3 × 8	\$24	1:1,500	2,720
\$4 × 6	\$24	1:1,500	2,720
\$8 × 3	\$24	1:1,500	2,720
\$3 × 8 (YES)	\$24	1:1,500	2,720
\$24	\$24	1:1,500	2,720
\$4 × 8	\$32	1:12,000	340
\$4 × 8 (YES)	\$32	1:12,000	340
\$32	\$32	1:15,000	272
\$6 × 8	\$48	1:60,000	68
\$8 × 6	\$48	1:60,000	68
\$24 × 2	\$48	1:60,000	68
\$6 × 8 (YES)	\$48	1:60,000	68
\$48	\$48	1:60,000	68
\$10 × 8	\$80	1:120,000	34
\$10 × 8 (YES)	\$80	1:120,000	34
\$80	\$80	1:120,000	34
\$80 × 5	\$400	1:120,000	34
\$400	\$400	1:120,000	34
\$8,888	\$8,888	1:1,360,000	3

"YES" in Bonus Box = win all 8 prizes

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Magic 8 Ball instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Magic 8 Ball prize money from winning Pennsylvania Magic 8 Ball instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Magic 8 Ball instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), the regulations contained in 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Magic 8 Ball or through normal communications methods.

GREGORY C. FAJT,  
Secretary

[Pa.B. Doc. No. 03-1274. Filed for public inspection June 27, 2003, 9:00 a.m.]

## DEPARTMENT OF STATE

### Notice of Availability of the State Plan

On June 28, 2003, the Secretary of the Commonwealth will make available for public inspection the Commonwealth's preliminary State Plan. The State Plan outlines the methods the Commonwealth will use to comply with the requirements of the Federal Help America Vote Act of 2002 and how it will use grants from the Federal government to achieve this goal. Interested individuals or groups may access a copy of the preliminary State Plan on the Department of State's (Department) website at [www.dos.state.pa.us](http://www.dos.state.pa.us) or by contacting Barbara Smotherman, (717) 787-3796. A 30-day comment period is provided, which will expire on July 28, 2003. Comments can be submitted to the Department by contacting Barbara Smotherman, (717) 787-3796, [bsmotherma@state.pa.us](mailto:bsmotherma@state.pa.us).

In addition, the Secretary of the Commonwealth will conduct public hearings relating to the Commonwealth's preliminary State Plan. The hearings will be held in Pittsburgh, Philadelphia and Reading. Detailed notices of the hearings will be published in the *Pennsylvania Bulletin* and on the Department's website as well as the dates, times and exact locations of the hearings have been determined.

PEDRO A. CORTES,  
Secretary of the Commonwealth

[Pa.B. Doc. No. 03-1275. Filed for public inspection June 27, 2003, 9:00 a.m.]

## ENVIRONMENTAL HEARING BOARD

**Citizens for Pennsylvania's Future (PennFuture), Appellant v. DEP and Graymont (PA), Inc., Permittee, Appellees; EHB Doc. No. 2002-149-C**

The Department of Environmental Protection (Department), Citizens for Pennsylvania's Future and Graymont (PA), Inc. have agreed to a settlement of the previously captioned matter. The subject of this appeal is the Department's issuance on May 1, 2002, of National Pollutant Discharge Elimination System (NPDES) Permit No. PA0207217 and Noncoal Surface Mining Permit (SMP) No. 14920304 to Graymont for an underground noncoal mine in Benner and Patton Townships, Centre County. Specifically, the appeal relates to the NPDES permit which is "Part A" of the noncoal SMP.

The parties have agreed to a settlement, the major provisions of which include:

1. Revocation by the Department of the NPDES permit and Special Condition No. 4(c) of the noncoal SMP within 40 days of the Board's approval of the Consent Adjudication. In addition, the Department will require public notice of the reinstated application for the NPDES permit and provide for public participation concerning that application. Publication will include a newspaper of general circulation in the vicinity of the discharge as well as in the *Pennsylvania Bulletin* and notice to the relevant municipalities and agencies. The public notice and public participation requirements will also cover proposed permit conditions concerning the rate or volume of the discharge into Buffalo Run and the initial submission of the blasting module (Module 16.1-16.5) of the application for the SMP.

2. Graymont will publish public notice of the NPDES application in a newspaper of general circulation in the vicinity of the discharge; submit to the Department for initial consideration the blasting module (Module 16.1-16.5) of the SMP application, publish public notice of the initial submission of Module 16.1-16.5 in a newspaper of general circulation and make a copy of the new or reinstated portions of the permit application available at a public office approved by the Department. Graymont will not appeal the Department's actions described in (1), but retains all rights to appeal the Department's final actions regarding Graymont's reinstated application for the NPDES permit, any special condition concerning the rate or volume of the discharge or the blasting module (Module 16.1-16.5) of the SMP application.

3. Citizens for Pennsylvania's Future will not appeal any portion of the SMP that is not revoked by the Department. It also retains the right to appeal the Department's final actions on the new or reinstated portions of the permit application noted.

Copies of the entire agreement are in the hands of Thomas M. Crowley, Assistant Counsel, Department of Environmental Protection, Southcentral Regional Counsel, 909 Elmerton Avenue, 3rd Floor, Harrisburg, PA 17110, (717) 787-8790; Joel R. Burcat, Esquire, Saul Ewing, LLP, Penn National Insurance Tower, 2 North Second Street, 7th Floor, Harrisburg, PA 17101-1604, (717) 257-7506; and Kurt J. Weist, Esquire, Senior Attorney, Citizens for Pennsylvania's Future, 610 North Third Street, Harrisburg, PA 17101-1113, (717) 214-7920.

The Consent Adjudication is also available at the office of the Environmental Hearing Board and may be reviewed by interested parties on request during normal business hours. Public comments will be received for 30 days from the date of this notice. A copy of any comments should be sent to each of the parties at the previous addresses.

MICHAEL L. KRANCER,  
*Chairperson*

[Pa.B. Doc. No. 03-1276. Filed for public inspection June 27, 2003, 9:00 a.m.]

## HOUSING FINANCE AGENCY

**Request for Proposals; 2004 Tax-Exempt Qualified Residential Rental Facilities Seeking Private Activity Bond Allocations**

Private activity bonds to finance qualified residential rental facilities are subject to the limitations imposed through the Statewide unified private activity bond cap (volume cap). In accordance with the act of November 17, 1998 (P. L. 788, No. 100), the Department of Community and Economic Development (DCED) provides for the allocation of volume cap to issue private activity bonds among the various qualified issuers in this Commonwealth. Each year DCED provides certain allocations to the Housing Finance Agency (Agency) for the issuance of private activity bonds for housing purposes.

The Agency encourages the development of quality affordable rental housing in this Commonwealth. This Request for Proposals (RFP) has been designed to establish a process for inviting, evaluating and selecting qualified tax exempt residential rental facilities seeking allocations of volume cap in 2004.

The Agency encourages applications from multifamily developments and will use its best efforts to provide volume cap to as many qualified properties as are reasonably feasible, subject to continued availability of volume cap for these purposes.

### *Program Deadlines*

Time deadlines have been established for processing and reviewing applications and will be adhered to by the Agency. Developers are advised to evaluate their financing goals and development preparedness prior to applying for volume cap. Developments not meeting the minimum qualifications or otherwise failing to evidence an ability to meet each of the following deadlines may be rejected at any time by the Agency.

The timeframe for the process is as follows:

- June 13, 2003 Board announces Request for Proposals/posts on website.
- July 15, 2003 Applications and letters of instructions are available.
- October 10, 2003 Applications, with all fees and exhibits, will be accepted.
- November 19, 2004 Preclosing packets are due by 3 p.m. at the Agency.
- December 8, 2004 Bond and development financings must be completed.



- June 13, 2003 Board announces Request for Proposals/posts on website.
- December 9, 2004 The Agency recaptures any preliminary volume cap not used.

Applications will be accepted on a first come, first served basis on or after October 10, 2003 and may be accepted up to August 2, 2004. Applicants are urged to submit complete applications as early as possible to ensure adequate processing time for consideration and to best ensure that all financing activity will be completed prior to the aforementioned deadlines.

The Agency will attempt to complete its review of applications in a timely manner and provide preliminary allocations within 3 months from the date of application. Once the Agency provides a preliminary allocation of volume cap for a housing facility, the developer and its bond issuer must issue bonds and commence construction within the previous time frames. Failure to finalize all aspects of development and bond financings within this time period and to submit all required preclosing and closing documentation to the Agency will result in recapture of the volume cap. Developers and issuers are advised to review funding sources, commitments and financing structures to ensure they can meet these deadlines for year 2004 submission.

The Agency will not approve carryforwards of unused volume cap for local bond issuers. In addition, the Agency requires that an actual construction loan closing occur on or before December 8, 2004. All development funding must be in place and actual construction or property rehabilitation contracts must be completed, without condition. Escrow or construction bridge loan closings will not satisfy the Agency's closing requirement.

In addition to meeting all requirements relating to private activity bonds set forth in section 147(g) of the Code, as amended, developments using Federal Low Income Housing Tax Credits (Tax Credits) in their financing plan must also meet all requirements of section 42 of the Code, as amended, and the year 2004 PHFA Tax Credit Allocation Plan (2004 plan), processing guide and program submission deadlines.

#### *RFP Summary*

This RFP announces the availability of year 2004 housing bond volume cap for the funding of multifamily developments on a first come, first served basis. Depending on the total volume cap available in this Commonwealth for housing bonds, the Agency may determine to fund multifamily developments as able to meet the following minimum qualifications.

The amount of volume cap available for multifamily developments is limited due to the competing uses of volume cap in this Commonwealth and among housing bond programs. Nevertheless, the Agency does encourage applications from multifamily developers and will use its best efforts to fund as many qualified projects as reasonably feasible. Sponsors are advised to submit applications early in the 2004 calendar year to maximize their potential to be funded out of available resources and to allow sufficient processing time.

Eligibility for tax exempt financing does not ensure qualification or eligibility under the 2004 Plan.

To qualify for private activity volume cap, residential rental facilities must meet all qualifications of the Code. These facilities may involve the rehabilitation of existing rental facilities, new construction of facilities, modernization of public housing facilities and construction of quali-

fied assisted living housing. Evidence of qualification must be provided through a narrative description of the financing structure at the time of application and prior to closing through the submission of a qualifying opinion from a bond counsel specializing in matters relating to private activity bond financings. The Agency reserves the right to reject any application not providing adequate assurance of any of these qualifications.

#### *Application Requirements*

The owner, general partner or sponsor and the proposed bond issuer must jointly submit a completed application (one original and two copies) to the Agency for consideration. (If Agency financing is requested, notice must be provided to the Agency prior to application submission.) Each application must be prepared in accordance with the 2004 Multifamily Housing Application Package and Guidelines and must include the following:

##### *A. Brief Narrative Description of the Development*

A brief narrative must outline how the development meets each of the following criteria:

- Qualification under the relevant bond financing sections of the Code.
- Qualification under Section 42 (Tax Credits) of the Code, if applicable, and a supporting letter from counsel or an accountant experienced in the Tax Credit Program.
- Qualification of the development team and the bond financing team.
- Evidence of financial feasibility of the facility and description of bond financing structure.
- Demonstrable evidence of commitment of all necessary financing sources.
- Demonstrable evidence of affordability of rents for low income residents.
- Ability to support a 30 year minimum affordability period for low income tenants or a demonstrable feasible plan to convert the development to affordable homeownership at the end of the qualified development period.
- A market study, in a form acceptable to the Agency, demonstrating an adequate market for the units, without adversely affecting or impairing existing or proposed rental properties in the proposed development locale.

##### *B. Letter Outlining Bond Financing Structure and Identifying Financing Team*

A letter must be included with the application, addressed to the Agency, signed by both the owner, general partner or sponsor and the proposed bond issuer outlining the bond financing structure and identifying each of the following (with names, addresses and phone numbers): (1) the proposed bond issuer; (2) development ownership entity and principal partners or guarantors; (3) bond counsel to the issuer; (4) underwriters or placement agents, if any; (5) underwriter's counsel, if any; and (6) all other entities involved in the financing (that is, rating agencies, bond insurer, letter of credit bank, and credit enhancement entity.)

In the event the Agency is not the bond issuer, the bonds must receive an investment quality rating from one of the Nationally recognized rating agencies (or otherwise meet Agency criteria to ensure that the bonds are maximizing and reasonably achieving market opportunities).

In the event the Agency is the bond issuer, all Agency financing and processing requirements must be met and a complete Agency financing application must be submitted

with the tax exempt financing application. (Contact the Agency for the applicable instructions.)

*C. Submission of Application Fees Identified in the Multifamily Housing Program Guidelines*

Upon submission of an application, the applicant is required to pay one application fee equal to the lesser of \$25 per unit or \$1,000. This is a nonrefundable fee. For facilities intending to use and qualify for tax credits, the Agency will assess additional tax credit fees for allocation and compliance monitoring as identified in the 2004 Multifamily Housing Program Guidelines. Costs incurred in this application process are the sole responsibility of the applicant.

*Minimum Criteria for Agency Review*

For Agency consideration, developments must meet the following minimum qualifications:

- May not apply for more volume cap than will reasonably support the financing structure. (The Agency may disallow applications for volume cap for construction financing if the applicant has another source of permanent financing, such as PennHOMES, which reduces the financing on a dollar for dollar basis. Disallowance is not intended to discourage leveraging HOPE VI and other public housing funds.)
- Evidence of qualification under the relevant bond financing sections of the Code.
- Evidence of qualification for tax credits, if applicable.
- Evidence of qualification of development team and bond financing team.
- Evidence of financial feasibility of facility and cost efficiency of bond financing structure—the Agency reserves the right to impose a cap on any volume cap requests.
- Evidence of commitment of all long term development financing sources.
- Evidence of long term affordability of rents for persons with low income.
- Evidence of ability to support a 30 year minimum low income set aside period or a feasible financial conversion to affordable homeownership at the end of the qualified project period.
- Evidence and support of adequate market for the units.
- Demonstration that the development will not adversely impact other affordable housing properties in the identified market area.

*Funding Priorities of the Program*

The Agency will give priority to developments that best demonstrate the following characteristics:

- Ability to quickly and efficiently close their financing, commence and complete construction.
- Maximum efficiency of all financing resources and structure.
- Provision of quality housing within the community for persons with greatest need.
- Affordability of development's rents.
- Reasonableness of costs for financing structure.
- Reasonableness of construction costs.
- Reasonableness of all third party fees.

The Agency may consider additional criteria it deems necessary in its discretion to achieve maximum benefit of the resources available to it for financing low and moderate residential rental facilities. Additional factors include, among other things, consideration of geographic and regional representation and resource allocation, community and economic impact and achieving the most qualified developments with the scarce resources through the imposition of a maximum per development allocation of volume cap. The Agency may disallow developments with identity of interest between any of the principal parties.

The Agency reserves the right to discontinue, modify, suspend or amend this program at any time, with or without further notice to interested parties. Decisions of the Agency are subject to additional conditions, restrictions and requirements as determined by the Agency in its sole discretion. In addition, the Agency's selection of developments for possible allocation of volume cap is subject to final allocation approval by DCED. The Agency also reserves the right to impose any conditions on the financing that it deems reasonable in its discretion.

*Application Submission/Contact Information*

Copies of this RFP and the required 2004 Multifamily Housing Application Package and Guidelines are available from the Development Division, Housing Finance Agency, 2101 North Front Street, Harrisburg, PA 17110, (717) 780-3882, fax (717) 780-3905. Additional information or guidance may be published from time to time on the Agency's website at [www.phfa.org](http://www.phfa.org).

Applications will be accepted beginning October 10, 2003. Fees, signed narratives and required exhibits and attachments must be included with the application. Applications must be signed and may not be submitted by facsimile or e-mail. Information submitted by the applicant or gathered by the Agency in the review of the application is the sole property of the Agency and may be made public.

The Agency is committed to a policy which prohibits discrimination against persons based upon race, religion, gender, national origin, handicap, familial status or age in its programs and employment.

WILLIAM C. BOSTIC,  
*Executive Director*

[Pa.B. Doc. No. 03-1277. Filed for public inspection June 27, 2003, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Action Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10:30 a.m., Thursday, June 12, 2003, and announced the following:

*Regulation Approved*

Pennsylvania Securities Commission #50-118: Banking and Savings and Loan Institutions (amends 64 Pa. Code Chapters 102, 202, 203, 204, 207, 305 and 606)

**Approval Order**

Public Meeting held  
June 12, 2003

*Commissioners Voting:* John R. McGinley, Jr., Esq., Chairperson, by phone; Alvin C. Bush, Vice Chairperson; Daniel F. Clark, Esq.; Arthur Coccodrilli; Murray Ufberg, Esq., by phone

*Pennsylvania Securities Commission—Banking and Savings and Loan Institutions; Regulation No. 50-118*

On February 3, 2003, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Pennsylvania Securities Commission (PSC). This rulemaking amends 64 Pa. Code Chapters 102, 202, 203, 204, 207, 305 and 606. The proposed regulation was published in the February 15, 2003, *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on May 15, 2003.

This final-form rulemaking updates provisions in 17 sections and deletes one section of its existing regulations. The changes are based on Federal law, including the National Securities Markets Improvement Act of 1996, Federal rules and guidelines, Pennsylvania Act 108 of 2002, and rules of the National Association of Securities Dealers and the North American Securities Administrators Association.

We have determined this regulation is consistent with the statutory authority of the PSC (70 P. S. § 1-609(a))

and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

*By Order of the Commission:*

This regulation is approved.

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 03-1278. Filed for public inspection June 27, 2003, 9:00 a.m.]

**Notice of Comments Issued**

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the Committee comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulation. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
#18-373	Department of Transportation Official Traffic Control Devices (33 Pa.B. 1930 (April 19, 2003))	5/19/03	6/18/03

**Department of Transportation Regulation No. 18-373**

**Official Traffic Control Devices**

**June 18, 2003**

We submit for consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P. S. § 745.5b) which have not been met. The Department of Transportation (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on May 19, 2003. If the final-form regulation is not delivered within 2 years of the close of the public comment period, the regulation will be deemed withdrawn.

**1. Deletion of Chapter 203. Work Zone Traffic Control.—Implementation procedures; Clarity.**

This regulation adopts the National Manual on Uniform Traffic Control Devices and deletes existing chapters, including Chapter 203. In 2002, the General Assembly passed Act 229, which set forth requirements for signs before and after construction zones. The Department's statement of policy for initial implementation of Act 229 states in § 204.1(b) that the specifications in Chapter 204 "are in addition to the traffic-control devices required by

Chapter 203." Therefore, upon promulgation of this regulation, implementation of Act 229 would become confusing.

Under section 21 of Act 229, the statement of policy "shall be effective for a period not to exceed two years" and must "be replaced by regulations which shall be promulgated, adopted and published as provided by law." To avoid confusion, the Department should consider publishing another proposed rulemaking to implement Act 229 and then combining the rulemakings as one final-form regulation. This would be consistent with the directives of section 21 of Act 229 and would resolve our concern with the deletion of Chapter 203.

**2. Omission of citations, cross-references or necessary details.—Reasonableness; Clarity**

The following requirements are vague because they do not include the specific information needed to comply with the requirements. The Department should review these sections and add cross-references, citations or more detail so that the regulated parties have full notice of what is required. These sections include:

- Section 212.10(2) requires a request to include "sufficient information to allow the Department to make a ruling . . . ."
- Section 212.105 requires all sign posts to be of a "Department-approved breakaway design."

- Section 212.108(b)(3) should cite or reference the “most recent high-crash rate or high-crash severity rate table developed by the Department.”

- Section 212.116(a)(1) requires the safe load capacity of a bridge to be determined “in accordance with Department standards . . . .”

- Section 212.120(a) requires specific service signs to only be installed “in accordance with Department policy.”

- Section 212.404(b) states “Portable sign supports shall be of a type approved by the Department.”

### 3. Section 212.1. Definitions.—Reasonableness; Clarity.

#### *Engineering and traffic study*

This definition describes the study as “conforming to generally accepted engineering standards and practices.” There are two concerns with this phrase.

First, if this phrase is intended to be a requirement, it would not be enforceable because it is in a definition. Therefore, the phrase should be moved to the body of the regulation.

Second, it is not clear what standard would be used to determine if a study conforms to “generally accepted engineering standards and practices.” A cross-reference or further description is needed.

### 4. Section 212.3. Pennsylvania’s Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways.—Need; Reasonableness; Clarity.

This section states a published supplement “will include additional requirements for official traffic control devices contained in this chapter . . . .” It is unclear what additional requirements the Department envisions. The Department should explain why additional requirements are needed and why these requirements are not included in the proposed regulation and subject to comment.

### 5. Section 212.109. Bridge speed limits.—Clarity.

In subsection (a), is a “structural engineer” required to have qualifications such as a Professional Engineer license? If so, this requirement should be specified in the regulation.

### 6. Section 212.119. General motorist service signs.—Clarity.

This section states “The application of general motorist service signs shall be in accordance with the Department’s Statewide policy, and will *generally be limited to* expressways and freeways . . . .” (Emphasis added.) The phrase “generally be limited to” is vague. When would the application of general motorist service signs not be limited to expressways and freeways?

### 7. Section 212.408. Rumble strips.—Clarity.

The last sentence states “When rumble strips are used, it is desirable to extend the rumble strip patterns onto the shoulder whenever possible . . . .” Stating what is “desirable” is nonregulatory language. The regulation should clearly state what is required. If the intent of this provision is to advise providers of the Department’s preference, it may be more appropriate to include this information in a policy statement or other Department publication such as the publications listed in § 212.12.

JOHN R. MCGINLEY, Jr.,  
Chairperson

[Pa.B. Doc. No. 03-1279. Filed for public inspection June 27, 2003, 9:00 a.m.]

## Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulation on the date indicated. To obtain the date and time of the meeting at which the Commission will consider this regulation, contact the Commission at (717) 783-5417 or visit its website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). To obtain a copy of the regulation, contact the promulgating agency.

#### *Final-Form*

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
16A-5712	State Board of Veterinary Medicine Professional Conduct; Prescription Drugs	6/17/03

JOHN R. MCGINLEY, Jr.,  
Chairperson

[Pa.B. Doc. No. 03-1280. Filed for public inspection June 27, 2003, 9:00 a.m.]

## INSURANCE DEPARTMENT

### First Priority Health; Rate Filing

On June 11, 2003, First Priority Health (FPH) submitted filing no. H-746-FPH-BASE RATE 1/1/04 (Department ID A70942001) requesting the Insurance Department’s approval to increase the current 2nd quarter approved rates by 15.14% for the Community Rated HMO Program. FPH is also requesting approval to change the quarterly trend factors for both the hospital/specialist benefits and pharmacy to 3% and 3.78%, respectively. The current approved hospital/specialist quarterly trend factor is 2.62% and pharmacy quarterly trend factor is 3.93%. This filing will affect approximately 49,559 contracts. The proposed increase will generate an additional annual premium income of \$56.2 million. An effective date of January 1, 2004, is requested.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Department’s regional offices in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Rashmi Mathur, Actuary, Bureau of Accident and Health Insurance, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120 within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
Insurance Commissioner

[Pa.B. Doc. No. 03-1281. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Keystone Health Plan West; Rate Filing

On June 13, 2003, Keystone Health Plan West submitted filing no. 4-ERHMO-03KHPW (Department ID A70964001) requesting approval to increase the insured claim trend rate to 16.5% for its Health Maintenance Organization Medical Programs. This trend will apply to the demographically rated and experience rated business. This filing will apply to client notification dates on or after August 1, 2003, for new business and October 1, 2003, for renewals.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional offices in Harrisburg and Pittsburgh.

Interested parties are invited to submit written comments, suggestions or objections to Cherri Sanders-Jones, Actuary, Bureau of Accident and Health Insurance, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120 within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 03-1282. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Mark Mullen, M.D.; Prehearing

#### Appeal of Mark Mullen, M.D. under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM03-06-004

A prehearing telephone conference initiated by this office is scheduled for June 26, 2003, at 10:30 a.m. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before June 18, 2003. At the telephone conference, the parties shall be prepared to discuss possible consolidation of this case with Carl Rosenbaum, M.D., Doc. No. MM03-06-003.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before June 20, 2003, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before June 25, 2003.

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. 03-1283. Filed for public inspection June 27, 2003, 9:00 a.m.]

#### Penn Treaty Network America Insurance Company; Rate Increase Filing for Long Term Care Series IL2

Penn Treaty Network America Insurance Company is requesting approval to increase the premium 50% for the Home Health Care Forms IL2(PA)-N, IL2(PA)-P and the associated riders. The average premium will increase from \$1,250 to \$1,875 and will affect 2,049 policyholders in this Commonwealth.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional offices in Harrisburg.

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. 03-1284. Filed for public inspection June 27, 2003, 9:00 a.m.]

#### Penn Treaty Network America Insurance Company; Rate Increase Filing for Long Term Care Series 2400

Penn Treaty Network America Insurance Company is requesting approval to increase the premium 35% for the Long Term Care Forms N2400(PA), P2400(PA) and the associated riders. The average premium will increase from \$1,595 to \$2,153 and will affect 4,743 policyholders in this Commonwealth.

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Insurance Department's regional offices in Harrisburg.

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. 03-1285. Filed for public inspection June 27, 2003, 9:00 a.m.]

#### Review Procedure Hearings; Cancellation or Re- fusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68), in connection with the termination of the insureds' automobile policies. The hearings will be held in accordance with the requirements of the act; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional office in Harrisburg, 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 Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Ernst Epelbaum; file no. 03-182-05130; Nationwide Mutual Insurance Company; doc. no. P03-06-015; July 16, 2003, 10:30 a.m.

Appeal of June Richardson; file no. 03-193-05822; Erie Insurance Exchange; doc. no. P03-06-16; July 22, 2003, 10:30 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's

case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the 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 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. 03-1286. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insurer 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 hearings will be held in the Insurance Department's regional offices in Pittsburgh, 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 Pittsburgh Regional Office, Room 304 State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222.

Appeal of GEICO General Insurance Company; file no. 03-494-90551; Stewart G. and Filippa M. Weimer; doc. no. E03-06-014; August 14, 2003, 3:30 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the 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 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. 03-1287. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Review Procedure Hearings under the Unfair Insurance Practices Act

The following insured has requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with the company's termination of the insured's policy. The administrative hearing will be held in the Insurance Department's regional office in Harrisburg, 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 Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of the Estate of Ray W. and Janet L. Argot; file no. 03-181-05795; Erie Insurance Exchange; doc. no. P03-06-017; July 22, 2003, 1:30 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. 03-1288. Filed for public inspection June 27, 2003, 9:00 a.m.]

Carl M. Rosenbaum, M.D.; Prehearing

**Appeal of Carl M. Rosenbaum, M.D. under the  
Medical Care Availability and Reduction of Error  
(MCARE) Act (40 P. S. §§ 1303.101—1303.910);  
Doc. No. MM03-06-003**

A prehearing telephone conference initiated by this office is scheduled for June 26, 2003, at 10:30 a.m. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before June 18, 2003. At the telephone conference, the parties shall be prepared to discuss possible consolidation of this case with Mark Mullen, M.D., Doc. No. MM03-06-004.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before June 20, 2003, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before June 25, 2003.

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. 03-1289. Filed for public inspection June 27, 2003, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The following Liquor Control Board leases will expire:

Dauphin County, Wine & Spirits Shoppe #2210, 4999 Jonestown Road, Harrisburg, PA 17109-1705.

*Lease Expiration Date:* January 31, 2004

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 within 1/2 mile of the intersection of Jonestown Road (Route 22) and Devonshire Road, Lower Paxton Township.

*Proposals due:* July 18, 2003, 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

Fulton County, Wine & Spirits Shoppe #2901, 106 Lincoln Way West, McConnellsburg, PA 17233-1303.

*Lease Expiration Date:* 90-day status since August 1, 2002.

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 1,600 to 2,500 net useable square feet of new or existing retail commercial space within 1 mile of the junction of Routes 522 and 16, McConnellsburg Borough.

*Proposals due:* July 18, 2003, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Joseph P. Hannon, (717) 657-4228

Lehigh County, Wine & Spirits Shoppe #3903, 1918 Allen Street, Allentown, PA 18104-5005.

*Lease Expiration Date:* June 30, 2004

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 6,000 net useable square feet of new or existing retail commercial space within 1/2 mile of the intersection of Allen Street and 17th Street, Allentown.

*Proposals due:* July 18, 2003, 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

Monroe County, Wine & Spirits Shoppe #4504, 761 Main Street, Stroudsburg, PA 18360-2010.

*Lease Expiration Date:* June 30, 2004

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 3,100 net useable square feet of new or existing retail commercial space within 1/2 mile of the intersection of Main and South 8th Streets, Stroudsburg Borough.

*Proposals due:* July 18, 2003, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661  
**Contact:** Joseph P. Hannon, (717) 657-4228

JONATHAN H. NEWMAN,  
Chairperson

[Pa.B. Doc. No. 03-1290. Filed for public inspection June 27, 2003, 9:00 a.m.]

## MILK MARKETING BOARD

### Hearing and Presubmission Schedule; Milk Marketing Area No. 1

Under the provisions of the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 1 on October 1, 2003, at 9 a.m. in Room 202, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 1. In accordance with Section G of Official General Order A-890A, as amended by Official General Order A-890A (CRO 4), evidence will be limited to the following: annualized processing, packaging and delivery costs; updated costs for containers, ingredients and Class II products; updated labor, utility and insurance costs based on comparisons between costs per point for the second quarters of calendar years 2002 and 2003, adjustments to announced Class II prices; adjustment for shrinkage, sales of bulk products and cream processing costs; and a reasonable rate of return to milk dealers. Evidence shall be based on the audited costs of a cross-section of milk dealers doing business in Milk Marketing Area No. 1. Cost information for containers, ingredients and Class II products shall be based on April 2003 data.

The staff of the Board is deemed to be a party to this hearing and the attorney representing staff is deemed to have entered an appearance. Other persons that may be affected by the Board order fixing prices in Milk Marketing Area No. 1 may be included on the Board's list of parties by:

1. Having their counsel file with the Board, by 4 p.m. on September 12, 2003, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance), which shall identify by name and address the party on whose behalf the appearance is made. Thereafter, documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21 (relating to appearance in person), filing with the Board, by 4 p.m. on September 12, 2003, an address to which documents and other written communications required to be served upon them or furnished to them may be sent.

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. By 4 p.m. on September 19, 2003, each party shall file with the Board six copies and serve on all other parties one copy of:

- a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

- b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on September 26, 2003, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board or who wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a

document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 4 p.m. on September 15, 2003.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

LYNDA J. BOWMAN,  
*Secretary*

[Pa.B. Doc. No. 03-1291. Filed for public inspection June 27, 2003, 9:00 a.m.]

## Hearing and Presubmission Schedule; Milk Marketing Area No. 2

Under the provisions of the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 2 on September 3, 2003, at 9 a.m. in Room 202, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 2. Evidence will be limited to the following: annualized processing, packaging and delivery costs; updated costs for containers, ingredients and Class II products; updated labor, utility and insurance costs based on comparisons between costs per point for the second quarters of calendar year 2002 and 2003; consideration of skim and butterfat contents of products regulated by the Board; adjustment for shrinkage, sales of bulk products and cream processing costs; in-store handling costs; and a reasonable rate of return to milk dealers and stores. Evidence shall be based on the audited costs of a cross-section of milk dealers and stores doing business in Milk Marketing Area No. 2. Cost information for containers, ingredients and Class II products shall be based on April 2003 data.

The staff of the Board is deemed to be a party to this hearing and the attorney representing staff is deemed to have entered an appearance. Other persons that may be affected by the Board order fixing prices in Milk Marketing Area No. 2 may be included on the Board's list of parties by:

1. Having their counsel file with the Board, by 4 p.m. on August 8, 2003, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance), which shall identify by name and address the party on whose behalf the appearance is made. Thereafter, documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21 (relating to appearance in person), filing with the Board, by 4 p.m. on August 8, 2003, an address to which documents and other



written communications required to be served upon them or furnished to them may be sent.

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. By 4 p.m. on August 15, 2003, each party shall file with the Board six copies and serve on all other parties one copy of:

a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on August 29, 2003, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board or who wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 4 p.m. on August 11, 2003.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

LYNDA J. BOWMAN,  
*Secretary*

[Pa.B. Doc. No. 03-1292. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Hearing and Presubmission Schedule; Milk Marketing Area No. 3

Under the provisions of the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 3 on September 3, 2003, at 11 a.m. in Room 202, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 3. Evidence will be limited to the following: annualized processing, packaging and delivery costs; updated costs for containers, ingredients and Class II products; updated labor, utility and insurance costs based on comparisons between costs per point for the second quarters of calendar year 2002 and 2003; consideration of

skim and butterfat contents of products regulated by the Board; adjustment for shrinkage, sales of bulk products and cream processing costs; in-store handling costs; and a reasonable rate of return to milk dealers and stores. Evidence shall be based on the audited costs of a cross-section of milk dealers and stores doing business in Milk Marketing Area No. 3. Cost information for containers, ingredients and Class II products shall be based on April 2003 data.

The staff of the Board is deemed to be a party to this hearing and the attorney representing staff is deemed to have entered an appearance. Other persons that may be affected by the Board order fixing prices in Milk Marketing Area No. 3 may be included on the Board's list of parties by:

1. Having their counsel file with the Board, by 4 p.m. on August 8, 2003, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance), which shall identify by name and address the party on whose behalf the appearance is made. Thereafter, documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21 (relating to appearance in person), filing with the Board, by 4 p.m. on August 8, 2003, an address to which documents and other written communications required to be served upon them or furnished to them may be sent.

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. By 4 p.m. on August 15, 2003, each party shall file with the Board six copies and serve on all other parties one copy of:

a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on August 29, 2003, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board or who wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 4 p.m. on August 11, 2003.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

LYNDA J. BOWMAN,  
*Secretary*

[Pa.B. Doc. No. 03-1293. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Hearing and Presubmission Schedule; Milk Marketing Area No. 5

Under the provisions of the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 5 on October 1, 2003, at 11 a.m. in Room 202, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 5. Evidence will be limited to the following: annualized processing, packaging and delivery costs; updated costs for containers, ingredients and Class II products; updated labor, utility and insurance costs based on comparisons between costs per point for the second quarters of calendar year 2002 and 2003; consideration of skim and butterfat contents of products regulated by the Board; adjustment for shrinkage, sales of bulk products and cream processing costs; in-store handling costs; and a reasonable rate of return to milk dealers and stores. Evidence shall be based on the audited costs of a cross-section of milk dealers and stores doing business in Milk Marketing Area No. 5. Cost information for containers, ingredients and Class II products shall be based on April 2003 data.

The staff of the Board is deemed to be a party to this hearing and the attorney representing staff is deemed to have entered an appearance. Other persons that may be affected by the Board order fixing prices in Milk Marketing Area No. 5 may be included on the Board's list of parties by:

1. Having their counsel file with the Board, by 4 p.m. on September 12, 2003, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance), which shall identify by name and address the party on whose behalf the appearance is made. Thereafter, documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21 (relating to appearance in person), filing with the Board, by 4 p.m. on September 12, 2003, an address to which documents and other written communications required to be served upon them or furnished to them may be sent.

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. By 4 p.m. on September 19, 2003, each party shall file with the Board six copies and serve on all other parties one copy of:

- a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

- b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on September 26, 2003, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board or who wish the Board to take official notice of facts, shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 4 p.m. on September 15, 2003.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

LYNDA J. BOWMAN,  
*Secretary*

[Pa.B. Doc. No. 03-1294. Filed for public inspection June 27, 2003, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Default Order

Public Meeting held  
June 12, 2003

*Commissioners Present:* Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas; Kim Pizzigrilli

*Pennsylvania Public Utility Commission Law Bureau  
Prosecutory Staff (2003.0034) v. ESS.Com, LLC; Doc. No.  
C-20039884; A-310977*

### Default Order

*By the Commission:*

On April 3, 2003, Law Bureau Prosecutory Staff instituted a complaint against ESS.Com, LLC (Respondent), an interexchange reseller certificated at A-310977. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to the Respondent that its monthly Universal Service Fund (USF) assessments were overdue by 3 or more months. The complaint charged that the Respondent's failure to pay these assessments violates 52 Pa. Code §§ 63.161—63.171 and 66 Pa.C.S. §§ 3001—3009.

The Prosecutory Staff complaint sought an order from the Commission canceling the Respondent's certificate of public convenience for failure to pay its USF. The complaint was mailed by the Secretary's Bureau on April 22, 2003, and according to the postal return receipts, service was perfected on April 28, 2003. To date, more than 20 days later, no answer has been filed to the complaint, and the assessments have still not been paid. Finally, we are not aware that Respondent has any current customers in this Commonwealth, and Respondent was never assigned any NXX Codes.

Based on Respondent's failure to file an answer to the complaint or pay its assessments, we conclude that revocation of ESS.Com, LLC's certificate of public convenience is in the public interest. The Commission puts the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of another remedy as the Commission may deem appropriate. 66 Pa.C.S. §§ 504, 505, 506 and 3301. Furthermore, the Commission may take other appropriate action, including the imposition of penalties under section 3301, instead of cancellation, if Respondent seeks relief from this Default Order; *Therefore,*

*It Is Ordered That:*

1. The allegations in Law Bureau Prosecutory Staff's complaint are deemed admitted and the complaint is thereby sustained.

2. The Secretary serve a copy of this Default Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and the Attorney General's Bureau of Consumer Protection, and also cause a copy of this Default Order to be published in the *Pennsylvania Bulletin* with a 20-day comment period.

3. ESS.Com, LLC immediately cease offering to provide service to any new customers and, within 10 days of the entry of this Default Order, provide a written notice to each existing customer directing each to select an alternative service provider within 30 days of the date of the notice. The notice must include a statement of the Commission's intent to cancel the company's certificate of public convenience absent public comment within the 20-day time period established under Ordering Paragraph No. 2.

4. Absent the filing of adverse public comment, 30 days after publication in the *Pennsylvania Bulletin* and without further action by the Commission, the certificate of public convenience held by ESS.Com, LLC at A-310977 shall be canceled, and the company's name stricken from all active utility lists maintained by the Tariff and Annual Report Section of the Commission's Bureau of Fixed Utility Services and the Assessment Section of the Bureau of Audits.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1295. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Default Order

Public Meeting held  
June 12, 2003

*Commissioners Present:* Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas; Kim Pizzingrilli

*Pennsylvania Public Utility Commission Law Bureau  
Prosecutory Staff (2002.0294) v. ezTel Network Services,  
LLC; Doc. No. C-20039658; A-310901*

### Default Order

*By the Commission:*

On February 28, 2003, Law Bureau Prosecutory Staff instituted a complaint against ezTel Network Services, LLC (Respondent), an interexchange reseller certificated at A-310901. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to the Respondent that its fourth semiannual Telephone Consumer Education Program Fund Contribution was overdue by 3 or more months. The complaint charged that the Respondent's failure to pay this contribution violates 66 P. S. § 501.

The Prosecutory Staff complaint sought an order from the Commission canceling the Respondent's certificate of public convenience for failure to pay its Telephone Consumer Education Program Fund Contribution. The complaint was mailed by the Secretary's Bureau on March 17, 2003, and according to the postal return receipt, the document was undeliverable to the address on file with the Commission. To date, more than 20 days later, no answer has been filed to the complaint, and the contribution has still not been paid. Finally, we are not aware that Respondent has any current customers in this Commonwealth, and Respondent was never assigned any NXX Codes.

Based on Respondent's failure to file an answer to the complaint or pay its contribution, we conclude that revocation of ezTel Network Services, LLC's certificate of public convenience is in the public interest. The Commission puts the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of another remedy as the Commission may deem appropriate. 66 Pa.C.S. §§ 504, 505, 506 and 3301. Furthermore, the Commission may take other appropriate action, including the imposition of penalties under section 3301, instead of cancellation, if Respondent seeks relief from this Default Order; *Therefore,*

*It Is Ordered That:*

1. The allegations in Law Bureau Prosecutory Staff's complaint are deemed admitted and the complaint is thereby sustained.

2. The Secretary serve a copy of this Default Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and the Attorney General's Bureau of Consumer Protection, and also cause a copy of this Default Order to be published in the *Pennsylvania Bulletin* with a 20-day comment period.

3. ezTel Network Services, LLC immediately cease offering to provide service to any new customers and, within 10 days of the entry of this Default Order, provide a written notice to each existing customer directing each to select an alternative service provider within 30 days of the date of the notice. The notice must include a statement of the Commission's intent to cancel the company's certificate of public convenience absent public comment within the 20-day time period established under Ordering Paragraph No. 2.

4. Absent the filing of adverse public comment, 30 days after publication in the *Pennsylvania Bulletin* and without further action by the Commission, the certificate of public convenience held by ezTel Network Services, LLC at A-310901 shall be canceled, and the company's name

stricken from all active utility lists maintained by the Tariff and Annual Report Section of the Commission's Bureau of Fixed Utility Services and the Assessment Section of the Bureau of Audits.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1296. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Default Order

Public Meeting held  
June 12, 2003

*Commissioners Present:* Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas; Kim Pizzingrilli

*Pennsylvania Public Utility Commission Law Bureau  
Prosecutory Staff (2002.0294) v. Maxtel USA, Inc.; Doc.  
No. C-20039657; A-311063*

### Default Order

*By the Commission:*

On February 28, 2003, Law Bureau Prosecutory Staff instituted a complaint against Maxtel USA, Inc. (Respondent), an interexchange reseller certificated at A-311063. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to the Respondent that its fourth semiannual Telephone Consumer Education Program Fund Contribution was overdue by 3 or more months. The complaint charged that the Respondent's failure to pay this contribution violates 66 P. S. § 501.

The Prosecutory Staff complaint sought an order from the Commission canceling the Respondent's certificate of public convenience for failure to pay its Telephone Consumer Education Program Fund Contribution. The complaint was mailed by the Secretary's Bureau on March 17, 2003, and according to the postal return receipt, service was perfected on March 19, 2003. To date, more than 20 days later, no answer has been filed to the complaint, and the contribution has still not been paid. Finally, we are not aware that Respondent has any current customers in this Commonwealth, and Respondent was never assigned any NXX Codes.

Based on Respondent's failure to file an answer to the complaint or pay its contribution, we conclude that revocation of Maxtel USA, Inc.'s certificate of public convenience is in the public interest. The Commission puts the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of another remedy as the Commission may deem appropriate. 66 Pa.C.S. §§ 504, 505, 506 and 3301. Furthermore, the Commission may take other appropriate action, including the imposition of penalties under section 3301, instead of cancellation, if Respondent seeks relief from this Default Order; *Therefore,*

*It Is Ordered That:*

1. The allegations in Law Bureau Prosecutory Staff's complaint are deemed admitted and the complaint is thereby sustained.

2. The Secretary serve a copy of this Default Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and the

Attorney General's Bureau of Consumer Protection, and also cause a copy of this Default Order to be published in the *Pennsylvania Bulletin* with a 20-day comment period.

3. Maxtel USA, Inc. immediately cease offering to provide service to any new customers and, within 10 days of the entry of this Default Order, provide a written notice to each existing customer directing each to select an alternative service provider within 30 days of the date of the notice. The notice must include a statement of the Commission's intent to cancel the company's certificate of public convenience absent public comment within the 20-day time period established under Ordering Paragraph No. 2.

4. Absent the filing of adverse public comment, 30 days after publication in the *Pennsylvania Bulletin* and without further action by the Commission, the certificate of public convenience held by Maxtel USA, Inc. at A-311063 shall be canceled, and the company's name stricken from all active utility lists maintained by the Tariff and Annual Report Section of the Commission's Bureau of Fixed Utility Services and the Assessment Section of the Bureau of Audits.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1297. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Rescission Order

Public Meeting held  
June 12, 2003

*Commissioners Present:* Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas; Kim Pizzingrilli

*U. S. Telecom Long Distance, Inc. (formerly Corporate  
Calling Services, Inc.); A-310629*

### Rescission Order

On May 22, 2003, the Commission entered a Tentative Order at this docket against Corporate Calling Services, Inc. (Corporate Calling or Company), now U. S. Telecom Long Distance, Inc. (U. S. Telecom), a telecommunications interexchange reseller certificated at A-310629, for failure to file with the Commission an annual assessment report for the fiscal year 2003-2004.

The Company filed a response on June 2, 2003, to the Tentative Order, advising the Commission that its current legal name is U. S. Telecom Long Distance, Inc. The Company stated that it filed an application to make this name change on May 22, 2002, and the application was subsequently approved by order entered on September 3, 2002, at A-310629. Robert Young, President of U. S. Telecom, stated that it has no record of receiving the annual assessment report mailed to its predecessor in Gig Harbor, Washington. U. S. Telecom requests that the Commission rescind the Tentative Order revoking the certificate of public convenience.

The annual assessment report referenced in the Tentative Order entered on May 22, 2003, was mailed to Corporate Calling at its preapplication address because our records had not been updated to effectuate the name and address change approved by the order entered September 3, 2002. The Company's regulatory consultant contacted the Bureau of Administrative Services, Assess-

ments Office, on May 28, 2003, and was informed that the Annual Assessment had been mailed to an incorrect name and address. U. S. Telecom was provided with the Annual Assessment report form and on May 28, 2003, the Company completed and returned the report to the Assessment Office.

The Commission is satisfied that U. S. Telecom's failure to file its annual assessment report for the 2003-2004 fiscal year was not its fault and that all future filings will be timely submitted; *Therefore,*

*It Is Ordered That:*

1. The Tentative Order entered May 22, 2003, is hereby rescinded.

2. A copy of the Order be published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1298. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest should indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 with a copy served on the applicant, on or before July 21, 2003. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

**Applications of the following for approval to *begin operating as common carriers for transportation of persons as described under each application.***

**A-00119747, Folder 2. Mobility Professionals, Inc.** (10 Holly Road, Richboro, Bucks County, PA 18934), a corporation of the Commonwealth—persons in airport transfer service, from points in the County of Bucks, to the Philadelphia International Airport, in the City and County of Philadelphia and Tinicum Township, Delaware County, and the Lehigh Valley International Airport, in the Township of Hanover, Lehigh County. *Attorney:* Richard T. Mulcahey, Jr., Two Penn Center, Suite 1400, 1500 John F. Kennedy Boulevard, Philadelphia PA 19102-1890.

**A-00119861. Susan B. Veach t/d/b/a Adventure Tours of the Capital Region** (682 Deer Court, Lewisberry, York County, PA 17339)—persons in group and party service, in vehicles seating 11 to 15 passengers, including the driver, between points in the Counties of Cumberland, Perry, Dauphin, York and Lancaster, and from points in said counties, to points in Pennsylvania, and return.

**A-00119860. Wayne Anderson Thompson** (501 Parson Street, Pittsburgh, Allegheny County, PA 15204)—persons in limousine service, between points in the

Counties of Allegheny and Beaver, and from points in said counties, to points in Pennsylvania, and return.

**A-00119867. John C. Taylor** (2809 Rhawn Street, City and County of Philadelphia, PA 19152)—persons in paratransit service, from points in the City and County of Philadelphia, to all State and Federal correctional institutions in Pennsylvania, and return.

**Application of the following for approval of the *additional right and privilege of operating motor vehicles as common carriers for transportation of persons by transfer of rights as described under the application.***

**A-00105688, Folder 2. Service Plus Delivery Systems** (4730 Market Street, City and County of Philadelphia, PA 19139), a corporation of the Commonwealth—persons in paratransit service: (1) between points in the Townships of Lower Merion, Upper Merion, Lower Providence, Upper Providence and Perkiomen, and the Borough of Norritonville, Montgomery County, the Townships of Bensalem, Middletown, Newtown, Lower Makefield, Falls and Bristol, Bucks County, the City and County of Philadelphia, and the County of Delaware, and from points in said places, to points in the Counties of Montgomery, Bucks and Chester and return; and (2) between points in the Townships of Cheltenham and Abington, and the Boroughs of Wyncote, Jenkintown and Elkins Park, Montgomery County, and from points in said places, to points in the Counties of Philadelphia, Bucks, Montgomery, Delaware and Chester and return; which is to be a transfer of all of the rights authorized under the certificate issued at A-00106785, F. 3 to Metro Care, Inc., subject to the same limitations and conditions. *Attorney:* John J. Gallagher, 1760 Market Street, Suite 1100, Philadelphia, PA 19103.

**Application of the following for approval of the *beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under the application.***

**A-00119864. AA Transit, Inc.** (118 South Pugh Street, State College, Centre County, PA 16801), a corporation of the Commonwealth—persons upon call or demand in the County of Centre; which is to be a transfer of all the right held by Michael Basher, Jr. t/d/b/a Lion Country Management Group at A-00117446; subject to the same limitations and conditions. *Attorney:* Virginia B. Eisenstein, The Towers, 403 S. Allen Street, Suite 210, State College, PA 16801.

**Applications of the following for approval of the *additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under each application.***

**A-00115729 Folder 3. Green's Taxi, Inc.** (2079 Smith Township State Road, Burgettstown, Washington County, PA 15021), a corporation of the Commonwealth—persons in group and party service, in vehicles seating 11 to 15 passengers, including the driver, between points in the County of Washington, and from points in said county, to points in Pennsylvania, and return. *Attorney:* Paul J. Walsh, P. O. Box 356, Slovan, PA 15078.

**A-00115729 Folder 4. Green's Taxi, Inc.** (2079 Smith Township State Road, Burgettstown, Washington County, PA 15021), a corporation of the Commonwealth—persons in paratransit service: (1) between points in the County of Washington, and from points in said county, to points in Pennsylvania, and return; and (2) from points in the

County of Allegheny, to other points in Pennsylvania, and return. *Attorney:* Paul J. Walsh, P. O. Box 356, Slovan, PA 15078.

**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-00119720, Folder 2. Movin' Murdy, Inc.** (392 Whittier Drive, Pittsburgh, Allegheny County, PA 15235), a corporation of the Commonwealth—household goods in use, between points in the County of Allegheny, and from points in said county, to points in Pennsylvania, and vice versa.

**Applications of the following for amendment to the certificate of public convenience approval of the right and privilege to discontinue/abandon operating as common carriers by motor vehicle and for cancellation of the certificate of public convenience as described under each application.**

**A-00113533, Folder 1, Am-A. Fayette County Community Action Agency, Inc.** (140 N. Beeson Avenue, Uniontown, Fayette County, PA 15401), a corporation of the Commonwealth—discontinuance of service and cancellation of its certificate—persons in paratransit service, between points in the County of Fayette, and from points in said county, to points in the Counties of Allegheny, Greene, Washington and Westmoreland, and return: subject to the following conditions: (1) that no right, power or privilege is granted to provide service between points in the Boroughs of Belle Vernon, Fayette City and Perryopolis, and the Townships of Perry and Washington, Fayette County, and from said boroughs and townships to points in Pennsylvania within an airline distance of 50 statute miles of the limits of the City of Monessen, Westmoreland County; (2) that no right, power of privilege is granted to provide medical paratransit service which includes: (a) service involving the use of vehicles having emergency vehicle registration plates; (b) service involving equipment operated only by State certified emergency medical technicians; or (c) service involving the use of medical appliances or equipment, or medical escort during transport, which is provided by the applicant as part of the transportation service; provided, however, that this restriction does not apply to transportation for persons eligible for nontransportation service provided under other programs operated by the applicant or any corporation affiliated with the applicant.

**A-00118526, Folder 1, Am-A. Edward B. Warner t/d/b/a Endless Mountain Taxi** (17 Chenango Street, Montrose, Susquehanna County, PA 18801)—discontinuance of service—of persons upon call or demand in the County of Susquehanna.

**Complaint**

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Rebecca Dale Gundlach, t/d/b/a Big Dog Trucking; Doc. No. A-0115665C F. 2*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section

701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Rebecca Dale Gundlach, t/d/b/a Big Dog Trucking, respondent, maintains a principal place of business at P. O. Box 142, Geigertown, PA 19523.
2. That respondent was issued a Certificate of Public Convenience by this Commission on February 14, 2001, at Application Docket No. A-00115665, F. 2.
3. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance and cargo insurance on file with this Commission.
4. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

WHEREFORE, unless respondent causes its insurer to file evidence of insurance with this Commission within twenty days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue a Secretarial Letter which (1) cancels the Certificate of Public Convenience held by respondent at Docket No. A-00115665, F. 2, for failure to maintain evidence of current insurance on file with the Commission, (2) orders such other remedy as the Commission may deem to be appropriate, which may include a fine and the suspension of a vehicle registration and (3) imposes an additional fine on the respondent.

Respectfully submitted,

Michael E. Hoffman, Director  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

VERIFICATION

I, Michael E. Hoffman, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
Michael E. Hoffman

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, Contract Carrier Per-

mit, or Brokerage license, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations within twenty days of the date of service of this Complaint. The proof of insurance must be filed with the Secretary of the Commission at the address set forth in Paragraph A. Upon receipt of the evidence of insurance from your insurer, the complaint proceeding shall be closed. ACORD CERTIFICATES OF INSURANCE ARE UNACCEPTABLE AS EVIDENCE OF INSURANCE.

D. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission enter an order imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional penalty set forth in Paragraph B.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Insurance/Filing Unit at (717) 783-5933.

### **Complaint**

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Muller Cab Corporation, 8545 Temple Road, Philadelphia PA 19150; Doc. No. A-00116048C03 P-298*

### COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Muller Cab Corporation, respondent, maintains its principal place of business at 8545 Temple Road, Philadelphia, Pennsylvania 19150.
2. That respondent was issued a certificate of public convenience by this Commission on September 28, 1999, at Application Docket No. A-00116048.
3. That respondent's operating rights were suspended on August 27, 2002, for failure to maintain evidence of insurance on file with this Commission. The suspension was lifted October 1, 2002.
4. That respondent, on September 23, 2002, permitted a certain 1998 Ford taxicab bearing Pennsylvania License No. TX38880, Vehicle Identification No. 2FAFP71W8WX133235, Medallion No. P-298, to be operated.
5. That respondent, by operating its vehicle while under suspension for failing to maintain evidence of insurance on each of its vehicles used in providing service authorized by this Commission, violated 66 Pa.C.S.

§ 501(c) in that it failed to observe, obey and comply with a Commission regulation or order, and the terms and conditions thereof. Penalty is \$1,000.00 and cancellation of its certificate of public convenience.

WHEREFORE, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Muller Cab Corporation, the sum of one thousand dollars (\$1,000.00) for the illegal activity described in this complaint and requests that the Commission revoke Muller Cab Corporation's certificate of public convenience at A-00116048.

Respectfully submitted,

Michael E. Hoffman, Director  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

### VERIFICATION

I, Michael E. Hoffman, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
Michael E. Hoffman

### NOTICE

A. You must file an answer within twenty (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this complaint. Your answer must be verified and the original and three (3) copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty (20) days, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. The penalty could include a fine, the suspension or revocation of your certificate of public convenience or other remedy.

C. If you file an answer which admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty (see B).

D. If you file an answer which contests the complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the optional fine set forth in C, above.

E. Alternative formats of this material are available, for persons with disabilities, by contacting the Technical Unit at (717) 783-5945.

### **Complaint**

DOUGLAS RALPH CAREY T/A  
DC TRUCKING  
841 BRICKCRAFTERS ROAD  
NEW OXFORD PA 17350

Re: Pennsylvania Public Utility Commission  
v.  
Douglas Ralph Carey, t/a D C Trucking  
A-00116236C0202  
A-00116236, F.2

Dear Mr. Carey:

On December 18, 2002, the Bureau of Transportation and Safety instituted a complaint against Douglas Ralph Carey, t/a D C Trucking, respondent, alleging respondent failed to achieve a satisfactory evaluation of their safety fitness review and, for failure to maintain adequate, efficient and safe service and facilities.

The complaint specified that, if the respondent failed to answer the complaint within twenty (20) days from the date on which it was served, then the Bureau of Transportation and Safety would request the Commission to impose a penalty including suspension or cancellation of any certificate or permit the respondent may hold.

The complaint was served on respondent on December 18, 2002, and returned December 23, 2002. On January 18, 2003, the complaint and notice were published in the *Pennsylvania Bulletin*; and, to date, more than thirty (30) days later, no response has been received from respondent.

Therefore, the allegations in the complaint are admitted and the complaint is sustained.

The certificate of public convenience held by Douglas Ralph Carey, t/a D C Trucking, at A-00116236, F.2, is hereby revoked and that respondent cease and desist from further violations of the Public Utility Code, 66 Pa.C.S. §§ 101, et seq. and the regulations of this Commission, 52 Pa. Code § 1.1, et seq. In view of the cancellation of respondent's certificate of public convenience, it is specifically prohibited from rendering service as a common carrier by motor vehicle in intrastate commerce in the Commonwealth of Pennsylvania.

Should respondent wish to again provide Pennsylvania intrastate transportation, the filing of a new application and the payment of a \$100 fee is required. The application and fee shall be filed with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, and Harrisburg, PA 17105-3265.

James J. McNulty  
Secretary

JAMES J. MCNULTY,  
Secretary

[Pa.B. Doc. No. 03-1299. Filed for public inspection June 27, 2003, 9:00 a.m.]

### Wholesale Rate for Resale of Telecommunications Services Provided by Verizon Pennsylvania Inc.

Public Meeting held  
June 12, 2003

Commissioners Present: Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas; Kim Pizzingrilli

Wholesale Rate for Resale of Telecommunications Services Provided by Verizon Pennsylvania Inc.; Doc. No. R-00038516

#### Order

By the Commission:

This Order initiates a new proceeding to establish wholesale rates for resale of telecommunications services

provided by Verizon Pennsylvania Inc. (formerly Bell Atlantic-Pennsylvania Inc.) (Verizon) to retail subscribers. The existing wholesale rates have been declared unlawful by the United States Court of Appeals for the Third Circuit.<sup>1</sup> The Commission, through counsel, has consented to initiate a proceeding to establish wholesale rates that comply with current legal requirements. With Verizon's consent, the rates to be established will become effective on a going-forward basis and will not be retroactive; the existing rates shall remain in effect pending the outcome of the new proceeding.

In 1997, the Commission established Verizon's existing wholesale rates. *Pennsylvania Public Utility Commission v. Bell Atlantic*, Order entered February 6, 1997, at R-00963578. The Commission established a rate of 18.43% with operator services and 20.69% without operator services, with an additional 5.00% discount for resellers agreeing to indemnify Verizon for the applicable Pennsylvania gross receipts tax. Commission reviewed the rates in 1999 and decided not to change them.<sup>2</sup> They remain in existence today.

The Commission followed Federal pricing regulations when establishing the rates. The Federal requirements were promulgated by the Federal Communications Commission (FCC) in 1996 as part of the FCC's implementation of the Telecommunications Act of 1996 (Act).<sup>3</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (rel. Aug. 8, 1996) at paras. 863-984; 47 CFR 51, Subpart G—Resale.

In 2000, as a result of litigation over the lawfulness of the FCC regulations, the United States Court of Appeals for the Eighth Circuit struck down the "reasonably can be avoided" standard found in 47 CFR 51.609 (providing that "Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent [local exchange carrier] provides a telecommunications service for resale at wholesale rates to a requesting carrier"). *Iowa Utils. Bd. v. Federal Comm. Comm'n*, 219 F.3d 744, 755-56 (8th Cir. 2000).<sup>4</sup> The Eighth Circuit held that the standard impermissibly conflicted with the Act's requirement that wholesale pricing be established using a "will be avoided" or "actually avoided" standard. *Id.*; 47 U.S.C.A. § 252(d)(3) (providing that rates be based "costs that will be avoided").

Since the Commission had applied the Federal regulations when establishing the existing rates, the Eighth Circuit's decision led the United States Court of Appeals for the Third Circuit to invalidate the Commission-established rates. The occasion of the invalidation was Federal court litigation initiated by Verizon in Pennsylvania. Since it was undisputed by the litigating parties that the Commission had followed the FCC's regulations and those regulations were deemed unlawful, the Third Circuit concluded the Commission erred in setting the rates

<sup>1</sup>*MCI Telecom. Corp. v. Bell Atlantic-Pa.*, 271 F.3d 491, 519-520 (3d Cir. 2001), cert. denied 123 S. Ct. 340 (2002) (reversing District Court judgment upholding the rates). The relevant District Court proceeding is *MCI Telecom. Corp. v. Bell Atlantic-Pa.*, Civil Action No. 03-685 (E.D. Pa.), originally filed at Civil Action No. CV-97-1857 (M.D. of Pa.).

<sup>2</sup>*Joint Petition of NEXTLINK Pennsylvania, Inc., et al. for Adoption of Partial Settlement Resolving Pending Telecommunications Issues and Joint Petition of Bell Atlantic Pennsylvania, Inc., et al. for Resolution of Global Telecommunications Proceedings*, PUC Docket Nos. P-00991648 and P-00991649, Order entered Sept. 30, 1999, at 124-125.

<sup>3</sup>Pub. L. No. 104-104, 110 Stat. 56, codified at §§ 151 et seq.  
<sup>4</sup>The FCC did not appeal the Eighth Circuit's invalidation of the "reasonably can be avoided" standard. Other determinations were reviewed by the Supreme Court of the United States. See *Verizon Communs., Inc. v. Federal Comm. Comm'n*, 122 S. Ct. 1646 (2002).





the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 22 Pa. Code § 201.1 (relating to applicability of general rules), procedural matters will be in conformance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) unless specific exemption is granted.

DALE H. EVERHART,  
*Secretary*

[Pa.B. Doc. No. 03-1302. Filed for public inspection June 27, 2003, 9:00 a.m.]

## TURNPIKE COMMISSION

### Retention of an Engineering Firm

#### **In-depth Inspection of the Blue Mountain and Kittatinny Tunnels, Franklin County Reference No. 2-066**

The Turnpike Commission (Commission) will retain an engineering firm to perform a detailed inspection of both tubes of the Blue Mountain and Kittatinny Tunnels, located at Milepost 197.50 in Franklin County. Inspection services for the engineering firm of the tunnels will include, but not be limited to, structural integrity, drainage, electrical, mechanical, lighting and the portal buildings. Inspection of the roadway pavement will not be a part of this inspection. The successful firm will be required to prepare an inspection report listing all findings and recommendations.

The following factors will be considered by the Commission during the evaluation of the firms submitting letters of interest for this project:

a. Specialized experience and technical competence of prime consultant and subconsultants. The team must clearly demonstrate an ability to analyze available data to make decisions and develop plans to complete the project in a timely and cost effective manner.

b. Past record of performance with respect to cost control, work quality, ability to meet schedules and previous experience on similar projects. The consultant should identify similar projects that have been completed by that firm as the prime, the magnitude of the project and the client.

c. The specific experience and number of individuals who constitute the firm.

d. Capabilities of the proposed inspection team to address the tunnel inspection, engineering evaluations and recommendations.

e. Workload of the prime consultant and subconsultants for all Department of Transportation (Department) and Commission projects.

f. Other factors, if any, specific to the project.

Address these items and any necessary further details in a brief yet comprehensive manner in the letter of interest.

Questions and inquiries concerning this solicitation should be directed to James L. Stump, P.E., (717) 939-9551, Ext. 5540, [jstump@paturndpike.com](mailto:jstump@paturndpike.com). Contractual questions should be directed to George M. Hatalowich, (717) 986-8737, [ghatalow@paturndpike.com](mailto:ghatalow@paturndpike.com).

### General Requirements and Information

Firms interested in providing the previous work and services are invited to submit a statement of interest with the required information. The statements of interest must include the following:

1. A one-page transmittal letter clearly identifying the project reference number, brief description of the project from the advertisement, the firm's Federal identification number, the firm's legal name, contact person or project manager, address of corporate office and project office. (If the firm has multiple offices, the location of the office performing the work must be identified.)

2. A three-page expression of interest on the advertised project. Each firm should demonstrate their ability to perform the specific requirements indicated for each project and provide explanation of the technical approach.

3. An organization chart for the project identifying key personnel and any subconsultants and their roles. Any deviation from the subconsultants listed in the statement of interest will require written approval from the Commission.

4. Tabulation or listing of workload for the prime consultant and all subconsultants for all Department and Commission projects. Do not graphically represent the firm's workload.

5. A Consultant Qualification Package similar to the one submitted to the Department for the current year or one that is best suited for this project. A copy of the Consultant Qualification Package printed directly from the Department's ECMS website is acceptable.

The Consultant Qualification Package should contain, at a minimum, the following information for the prime consultant and all subconsultants and attached to the back of the statement of interest (subs to follow primes):

- ECMS General Information and Project Experience Forms or Standard Form (SF) 254—Architect-Engineer and Related Services Questionnaire in its entirety, either not more than 1 year old as of the date of the advertisement.

- Resumes of key personnel expected to be involved in the project (limit to two 8 1/2" x 11" pages per person). Only resumes of key personnel should be included.

- Copy of the firm's registration to do business in this Commonwealth as provided by the Department of State for firms with out-of-State headquarters or corporations not incorporated in this Commonwealth.

- A copy of the Department's DBE/WBE Certification, if applicable.

If a joint venture responds to a project advertisement, the Commission will not accept separate letters of interest from joint venture constituents. A firm will not be permitted to submit a letter of interest on more than one joint venture for the same project reference number. Also, a firm that responds to a project as a prime may not be included as a designated subconsultant to another firm that responds to the same project advertisement. This does not preclude a firm from being set forth as a designated subconsultant to more than one prime consultant responding to the project advertisement.

Firms interested in performing the previous services are invited to submit a statement of interest and required information to George M. Hatalowich, Manager, Contract Administration, Turnpike Commission Administration Building, 700 South Eisenhower Boulevard, Middletown,

PA 17057 (street address). The Commission mailing address is P. O. Box 67676, Harrisburg, PA 17106-7676.

The statement of interest and required information must be received by 12 p.m., Friday, July 18, 2003. Statements of interest received after this date and time will be time-stamped and returned.

Based on an evaluation of acceptable statements of interest received in response to this solicitation, one firm will be selected for each contract. The order of preference will be established for the purpose of negotiating an agreement with the highest ranked firm established by the Technical Review Committee and approved by the Commission. Technical proposals will not be requested prior to the establishment of the final ranking.

The Commission reserves the right to reject all statements of interest, to cancel solicitation requested under this notice and/or to readvertise solicitation for the work and services.

MITCHELL RUBIN,  
*Chairperson*

[Pa.B. Doc. No. 03-1303. Filed for public inspection June 27, 2003, 9:00 a.m.]

## Retention of an Engineering Firm

### Systemwide Biennial Bridge Inspection

#### Reference No. 3-156

The Turnpike Commission (Commission) will retain an engineering firm to perform the reinspection of approximately 850 structures owned by the Commission. The structures include bridges and culverts that are 20 feet or more in length. The work will be performed to meet the current National bridge inspection standards of the Federal Highway Administration and the Department of Transportation's (Department) Bridge Management System (BMS).

The superstructure and substructure of each bridge shall be inspected, rated and appraised based on criteria and guidelines defined in the following documents:

1. National Bridge Inspection Standards (NBIS).
2. AASHTO Manual for Condition Inspection of Bridges 1994 and its updates.
3. Bridge Inspector's Reference Manual, October 2002.
4. Culvert Inspection Manual, Report No. FHWA-IP-86-2.
5. Inspection of Fracture Critical Bridge Members, Report No. FHWA-IP-86-26.
6. BMS Coding Manual, Department Publications 100A October 1993 and its updates.
7. Manual for Inspecting Bridge for Fatigue Damage Conditions, Research Project No. 85-02.
8. Bridge Safety Inspection Manual, Policies and Procedures, Publication 238, October 2002.
9. BMS Coding Forms D-491 and their updates or a printout of the individual structure records from BMS.

The consultant must follow the existing 2-year interval schedule. Work performed must be completed by January 31, 2006.

The following factors will be considered by the Commission during the evaluation of the firms submitting letters of interest for this project:

- a. Specialized experience and technical competence of prime consultant and subconsultants. The team must clearly demonstrate an ability to analyze available data to make decisions and develop plans to complete the project in a timely and cost effective manner.
- b. Past record of performance with respect to cost control, work quality, ability to meet schedules and previous experience on similar projects. The consultant should identify similar projects that have been completed by that firm as the prime, the magnitude of the project and the client.
- c. The specific experience and number of individuals who constitute the firm.
- d. Workload of the prime consultant and subconsultants for all Department and Commission projects.
- e. Number of certified inspectors and inspection teams available for this assignment and their qualifications.
- f. Capabilities of the proposed teams to address the bridge inspection, engineering evaluations and recommendations.
- g. Internal procedures for cost containment and quality assurance.
- h. Other factors, if any, specific to the project.

Address these items and any necessary further details in a brief yet comprehensive manner in the letter of interest.

Questions and inquiries concerning this solicitation should be directed to James L. Stump, P.E., (717) 939-9551, Ext. 5540 [jstump@paturnpike.com](mailto:jstump@paturnpike.com). Contractual questions should be directed to George M. Hatalowich, (717) 986-8737, [ghatalow@paturnpike.com](mailto:ghatalow@paturnpike.com).

#### General Requirements and Information

Firms interested in providing the previous work and services are invited to submit a statement of interest with the required information. The statements of interest must include the following:

1. A one-page transmittal letter clearly identifying the project reference number, brief description of the project from the advertisement, the firm's Federal identification number, the firm's legal name, contact person or project manager, address of corporate office and project office. (If the firm has multiple offices, the location of the office performing the work must be identified.)
2. A three-page expression of interest on the advertised project. Each firm should demonstrate their ability to perform the specific requirements indicated for each project and provide explanation of the technical approach.
3. An organization chart for the project identifying key personnel and any subconsultants and their roles. Any deviation from the subconsultants listed in the statement of interest will require written approval from the Commission.
4. Tabulation or listing of workload for the prime consultant and all subconsultants for all Department and Commission projects. Do not graphically represent the firm's workload.
5. A Consultant Qualification Package similar to the one submitted to the Department for the current year or one that is best suited for this project. A copy of the

Consultant Qualification Package printed directly from the Department's ECMS website is acceptable.

The Consultant Qualification Package should contain, at a minimum, the following information for the prime consultant and all subconsultants and attached to the back of the statement of interest (subs to follow primes):

- ECMS General Information and Project Experience Forms or Standard Form (SF) 254—Architect-Engineer and Related Services Questionnaire in its entirety, either not more than 1 year old as of the date of the advertisement.
- Resumes of key personnel expected to be involved in the project (limit to two 8 1/2" x 11" pages per person). Only resumes of key personnel should be included.
- Copy of the firm's registration to do business in this Commonwealth as provided by the Department of State for firms with out-of-State headquarters or corporations not incorporated in this Commonwealth.
- A copy of the Department's DBE/WBE Certification, if applicable.

If a joint venture responds to a project advertisement, the Commission will not accept separate letters of interest from joint venture constituents. A firm will not be permitted to submit a letter of interest on more than one joint venture for the same project reference number. Also, a firm that responds to a project as a prime may not be included as a designated subconsultant to another firm that responds to the same project advertisement. This does not preclude a firm from being set forth as a

designated subconsultant to more than one prime consultant responding to the project advertisement.

Firms interested in performing the previous services are invited to submit a statement of interest and required information to George M. Hatalowich, Manager, Contract Administration, Turnpike Commission Administration Building, 700 South Eisenhower Boulevard, Middletown, PA 17057 (street address). The Commission mailing address is P. O. Box 67676, Harrisburg, PA 17106-7676.

The statement of interest and required information must be received by 12 p.m., Friday, July 18, 2003. Statements of interest received after this date and time will be time-stamped and returned.

Based on an evaluation of acceptable statements of interest received in response to this solicitation, one firm will be selected for each contract. The order of preference will be established for the purpose of negotiating an agreement with the highest ranked firm established by the Technical Review Committee and approved by the Commission. Technical proposals will not be requested prior to the establishment of the final ranking.

The Commission reserves the right to reject all statements of interest, to cancel solicitation requested under this notice and/or to readvertise solicitation for the work and services.

MITCHELL RUBIN,  
*Chairperson*

[Pa.B. Doc. No. 03-1304. Filed for public inspection June 27, 2003, 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.

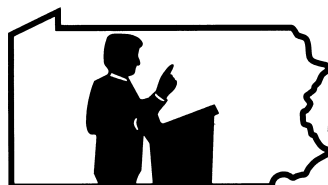
30 days after the later of the receipt of a proper invoice or receipt of goods or services.

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.

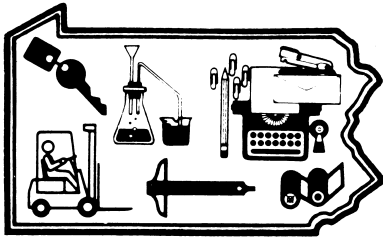
(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

## 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*

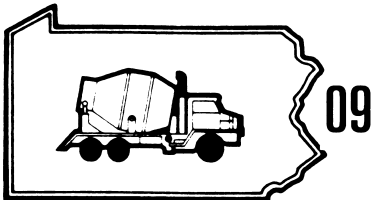


### Commodities

**11061** Seeking bids for various uniform parts to include gym shorts, polo shirts, sweaters, and boys/mens slacks. All uniform parts will include an embroidered school logo.

**Department:** Military Affairs  
**Location:** Scotland School for Veterans' Children, 3583 Scotland Road, Scotland, PA 17254-0900  
**Duration:** July 1, 2003 - August 15, 2003  
**Contact:** Marion Jones, (717) 264-7187 x661

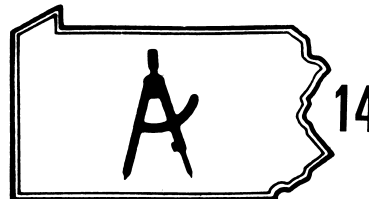
## SERVICES



### Construction & Construction Maintenance

**63-0209** Francis Harvey Green Library Elevator Control and Mechanical Modernization Project. The work consists of the modernization of two existing elevators located in the Francis Harvey Green Library. This work includes the labor and material to install new micro-computer based control systems, new variable voltage variable frequency drive and hoist way operating devices.

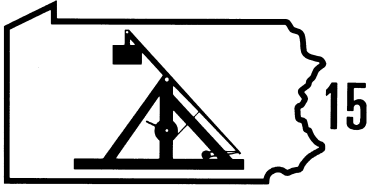
**Department:** State System of Higher Education  
**Location:** Borough of West Chester, West Chester, PA  
**Duration:** All work must be completed within 60 days of the issuance of the Notice to Proceed  
**Contact:** Marianne Peffall, (610) 436-2705



### 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](http://www.dot2.state.pa.us).

**Department:** Transportation  
**Location:** Various  
**Contact:** [www.dot2.state.pa.us](http://www.dot2.state.pa.us)

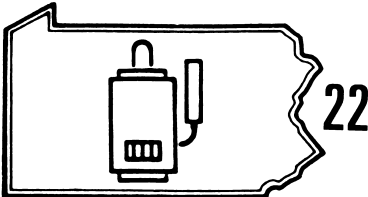


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### Environmental Maintenance Service

**BOGM 02-28** Cleaning Out and Plugging Thirteen (13) Abandoned Oil Wells, (Oil Creek State Park Property). The principal items of work and approximate quantities include cleaning out and plugging thirteen (13) abandoned oil wells to Department specifications, preparing and restoring well sites, and mobilizing and demobilizing plugging equipment. The wells are estimated to be between 600-1,000 feet in depth, using approximately 6,000 pounds of plugging material, and taking approximately 5 to 10 working days per well. This project issues on June 27, 2003, and bids will be opened July 17, 2003 at 2:00 p.m. A pre-bid conference is planned for this project but a date has not been set. Please use the contact information contained in this advertisement to find out more information on the pre-bid conference. Payment in the amount of \$10.00 must be received before bid documents will be sent.

**Department:** Environmental Protection  
**Location:** Cornplanter Township, Venango County, PA  
**Duration:** 200 calendar days after notice to proceed  
**Contact:** Construction Contracts Section, (717) 783-7994

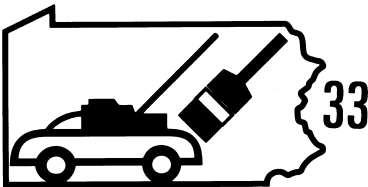


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### HVAC Services

**053736** Service is for the installation, maintenance and repair of electrical systems throughout Lehigh County which includes services to its buildings, stockpiles and services along roadways which are maintained by the Department. Contract will be for 1-3 year term with 1-2 year renewal option.

**Department:** Transportation  
**Location:** Lehigh County  
**Duration:** 1-3 year term with 1-2 year renewal option  
**Contact:** Daniel R. Graham, (610) 798-4280 ext 106

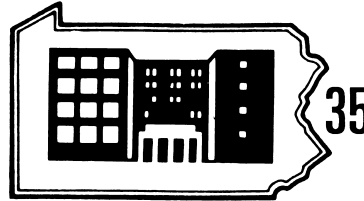


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### Property Maintenance

**SP-260222** Furnish all labor, equipment, material and supervision to provide snow plowing and/or snow removal (loading and hauling) and salting service from six individual parking lots utilized by the Pennsylvania Liquor Control Board within the Harrisburg area.

**Department:** Liquor Control Board  
**Location:** PA Liquor Control Board, 910 Capital Street, Northwest Office Building, Harrisburg, PA 17124-0001  
**Duration:** Upon Notice to Proceed and Ending: 10/31/2008  
**Contact:** Leland E. Scott, Jr., Purchasing Agent, (717) 787-9854

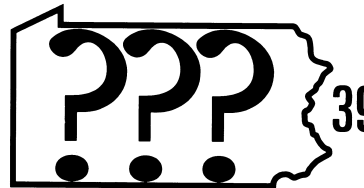


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### Real Estate Services

**93595** LEASE OFFICE SPACE TO THE COMMONWEALTH OF PA. Proposals are invited to provide the Department of Public Welfare with 20,920 useable square feet of office space with minimum parking for 53 vehicles, within the corporate City limits of Easton, Wilson Borough, Bethlehem Township and Palmer Township, Northampton County, PA. Downtown locations will be considered. For more information on SFP #93595 which is due on August 18, 2003 visit [www.dgs.state.pa.us](http://www.dgs.state.pa.us) under "Real Estate" to download an SFP package or call (717) 787-4394.

**Department:** Public Welfare  
**Location:** 505 North Office Building, Harrisburg, PA 17125  
**Contact:** Mrs. Cynthia T. Lentz, (717) 787-0952



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### Miscellaneous

**03-113-2737** Request for Proposals to provide the Pennsylvania Turnpike Commission with a provider to assist employees and their families with alcohol, drug and other related problems by providing access to a system-wide network of resources. The Employee Assistance Program (EAP) will make available confidential evaluations, referrals, case-management and follow-ups. Distribution of the RFP will begin on June 30, 2003. A pre-proposal conference will be held on Friday, July 18, 2003 at 1:00 PM at the Turnpike Administration Building in Middletown, PA. Closing date for receipt of proposals is 2:00 PM, Friday, August 15, 2003. Copies of the RFP can be obtained by calling 717-939-9551, extension 4142.

**Department:** Turnpike Commission  
**Location:** PTC Central Office, Middletown, PA  
**Duration:** Three year contract.  
**Contact:** Pat Burns, (717) 939-9551, ext 4142

[Pa.B. Doc. No. 03-1305. Filed for public inspection June 27, 2003, 9:00 a.m.]

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## DESCRIPTION OF LEGEND

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| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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DONALD T. CUNNINGHAM, Jr.  
*Secretary*